CLERK'S COPY

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 432

THE UNITED STATES OF AMERICA, PETITIONER

v.

TILLIE ZAZOVE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

CERTIORARI GRANTED DECEMBER 8, 1947.

PETITION FOR CERTIORARI FILED NOVEMBER 6, 1947

SUPREME COURT OF THE UNITED STATES

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[Caption omitted.]

2 In the District Court of the United States for the Northern District of Illinois, Eastern Division

No. 44–C–917

TILLIE ZAZOVE, PLAINTIFF

vs.

UNITED STATES OF AMERICA, DEFENDANT

and

FANNIE BROWN, ANNA SCHWARTZ AND MARY HARRIS, ADDITIONAL DEFENDANTS AND COUNTERCLAIMANTS

Agreed statement as to record on appeal

Filed Dec. 9, 1946

Inasmuch as the questions presented by the appeal of Tillie Zazove to the United States Circuit Court of Appeals for the Seventh Circuit in the above entitled cause can be determined without an examination of all the pleadings, evidence and proceedings in the said District Court, the parties have prepared and signed this statement of the case, showing how the questions arose and were decided in the said District Court, and setting forth only so many of the facts offered and proved, or sought to be proved, as are essential to the decision of the questions by the said Circuit Court of Appeals.

After a disagreement between the plaintiff and the defendant as to the plaintiff's claim for insurance benefits as designated
3 beneficiary in a $5,000 contract of National Service Life Insurance upon the life of Adolph B. Schwartz, the above entitled suit was instituted August 9, 1944. After the cause was at issue, trial by jury was waived, and the cause tried without a jury.

In the pleadings and at the first trial it was contended by the plaintiff that she had stood in loco parentis to the said Adolph B. Schwartz for a period of more than one year prior to his entry into active service in the military service of the defendant. It was in like manner contended by the other parties that as the plaintiff never met the said Adolph B. Schwartz before he became twenty-six years of age, as a matter of law such relationship could not exist and that the plaintiff was not eligible as a beneficiary of said insurance, but that the insurance ought to be paid to his sisters, the third-party defendants and counter-claimants, who were his only surviving relatives within the eligible class.

The court held in the first trial, as a matter of law, that the in loco parentis relationship could not originate between adults

and over the plaintiff's objections, entered a finding and judgment against the plaintiff that she take nothing by her said suit.

It was contended by plaintiff that in the case of a beneficiary or beneficiaries of such insurance thirty or more years of age at the time of the death of the said Adolph B. Schwartz the insurance benefits were payable at such monthly rate as would make the face amount of the $5,000 insurance, with interest, payable in 120 equal monthly installments, and that the regulations of the Veterans' Administration which purported to make such insurance payable in equal monthly installments to be determined by the life expectancy of the first beneficiary or beneficiaries, so that the said face amount, and interest, and no more, would be paid during the life of the said first beneficiary whose actual lifetime coincided with the said life expectancy, amount to an attempt to legislate and are unauthorized and void. It was contended by the United States of America that said insurance was payable in accordance with regulation No. 3450 (b) of the United States Veterans' Administration and the court so decided over the objections of the plaintiff.

The evidence showed that said Adolph B. Schwartz entered said active military service February 3, 1941, and served therein
4 until his death, May 12, 1943. He was born November 1, 1911. While in such military service, on May 7, 1941, he applied for and was granted the said $5,000 contract of insurance and premiums were paid thereon up to and including the month of his death. In his application for said insurance he designated as beneficiary the plaintiff, whose relationship to him he designated as "aunt." He first became acquainted with and went to live in the home of the plaintiff in August, 1937. The plaintiff was born April 12, 1889. At no time after the said Adolph B. Schwartz became acquainted with the plaintiff was he mentally or physically incapacitated to provide for himself.

At the first trial among other documents admitted in evidence on motion of the defendant were the following:

A duly certified copy signed by H. L. McCoy, Director of Insurance, of Sections 3450 and 3451 of the Regulations of the United States Veterans' Administration and also certifying that the monthly installments of $5.51 payable under 240 monthly certain installments include interest of 3% per annum and the monthly installments payable under the life annuity (120 month certain) are calculated as provided by law upon the basis of American Experience Table of Mortality and interest at 3% per annum, the material portions of which regulations so certified are as follows:

3450—Payment To First Beneficiary.—Upon due proof of the death of the insured while a National Service Life Insurance policy is in force, the monthly installments, without interest

which have accrued since the death of the insured (the first installment being due on the date of death of the insured) and the monthly installments which thereafter become payable in accordance with the provisions of the policy, shall be paid to the beneficiary or beneficiaries entitled in the following manner:

(A) If the beneficiary to whom payment is first made is under thirty years of age at the time of the death of the insured, payment shall be made in 240 equal monthly installments at the rate of $5.51 for each $1,000 of such insurance.

(B) If the beneficiary to whom payment is first made is thirty or more years of age at the time of the death of the insured, payment shall be made in equal monthly installments for 120 months certain, with such payment continuing throughout the remaining lifetime of such beneficiary. The amount of the monthly installment for each $1,000 of insurance shall be determined by the age of the beneficiary as of last birthday at the time of the death of the insured, in accordance with the following schedule based upon the American Experience Table of Mortality and interest at the rate of three per centum per annum: (Partial schedule follows)

Age of beneficiary at date of death of insured	Amount of each monthly installment
30	$3.97
* * *	* * *
33	4.10
34	4.15
* * *	* * *
36	4.26
* * *	* * *
39	4.43
* * *	* * *
51	5.51
* * *	* * *
54	5.99
* * *	* * *
83	9.61
84	9.61
85	9.61

3451—Payment After Death of First Beneficiary.—Upon due proof of death of the first beneficiary after payment has been made of at least one installment, thereafter monthly installments in the same amount shall be paid to the person or persons entitled as beneficiary until all of the installments certain shall have been paid.

The judgment on the first trial awarded the insurance to the counter-claimants instead of the plaintiff, but on appeal of the plaintiff the said judgment was reversed and the cause remanded. The second trial was had by stipulation of the parties on the evidence received at said first trial, and the plaintiff's contentions at the second trial were the same as at the first, but the court thereupon made and entered November 29, 1946, over objections of the plaintiff as to amount findings of fact, conclusions of law and a judgment in words and figures as follows:

6 In the District Court of the United States

Findings of fact

This Cause having been tried by the court without a jury by agreement of the parties, the court hereby Finds as facts in said cause:

1. That Adolph B. Schwartz was born on November 1, 1911, and enlisted in the military service of the United States February 3, 1941, and died in such service May 12, 1943; that when he was more than twenty-one years of age and more than one year before he entered into active service in the United States Army, the plaintiff and the said Adolph B. Schwartz entered into a relationship wherein the plaintiff stood in loco parentis to the said Adolph B. Schwartz, and said relationship continued thereafter throughout his life; that on May 7, 1941, the said Adolph B. Schwartz applied for and was granted Five Thousand Dollars ($5,000.00) National Service Life Insurance by the United States of America, effective June 1, 1941, and in his application therefor designated the plaintiff by the name of Mrs. William Zazove as beneficiary thereof; that the said Adolph B. Schwartz never changed said designation of beneficiary and the said insurance was in full force and effect at his death; that the plaintiff filed her claim for said insurance in the Veterans' Administration December 16, 1943, and said claim was denied, and she was notified thereof by letter dated April 27, 1944, from H. L. McCoy, director of Insurance, and by virtue thereof a disagreement exists under Section 617 of the National Service Life Insurance Act.

2. The court further finds the plaintiff was born April 12, 1889.

3. The court further finds that John B. King and Edward H. S. Martin, the plaintiff's attorneys in this cause, have performed services as such attorneys for the plaintiff of the reasonable value of at least ten percent of the amount of the insurance involved in said cause now due or past due and hereafter to become due.

7 *Conclusions of law*

1. From the foregoing facts and in conformity to the opinion and judgment of the United States Circuit Court of Appeals for the Seventh Circuit on the former appeal in this cause, the court concludes that as a matter of law the question of amount of each monthly installment of insurance payable to the plaintiff has been conclusively determined and adjudicated by the said judgment on said former appeal by the failure of said Circuit Court of Appeals to rule otherwise under plaintiff's second assignment of errors, as the sum of Twenty-nine Dollars and Fifty Cents ($29.50) only, as contended by the defendant, and not Forty-eight Dollars and Eight Cents ($48.08), as contended by the plaintiff.

2. The court further concludes that the plaintiff Tillie Zazove is entitled to recover in this suit of and from the defendant United States of America benefits under said insurance, consisting of monthly installments of Twenty-nine Dollars and Fifty Cents ($29.50) per month for one hundred twenty (120) months certain, the first of said installments having become due to her May 12, 1943, and that the payment of said installments shall continue at the same rate throughout her natural life, if she shall live beyond the said one hundred twenty (120) months.

3. The court further concludes that there should be deducted by the defendant United States of America from the said installments whether now or hereafter due to be paid under or in consequence of the judgment in this cause, and paid to the plaintiff's attorneys, John B. King and Edward H. S. Martin, ten per centum of each installment of said insurance, being their fees as such attorneys herein, one-half of said fees to be paid to the said John B. King and one-half of the said fees to be paid to the said Edward H. S. Martin.

Judgment

Therefore, it is considered by the court that the objections of the defendant and of the additional defendants and counter-claimants to said findings of fact and conclusions of law, and the objections of the plaintiff to said conclusion of law as to the amount of each monthly installment of insurance, each and
8 all, be and hereby are overruled, and that the plaintiff Tillie Zazove do have and recover of and from the defendant United States of America the sum of One Thousand Two Hundred Sixty-eight Dollars and Fifty Cents ($1,268.50), the total amount of the said accrued monthly installments of insurance at the rate of Twenty-nine Dollars and Fifty Cents ($29.50) per

month, beginning May 12, 1943, to and including the installment thereof due November 12, 1946.

It is Further Hereby Ordered and Adjudged that the defendant United States of America deduct ten per centum of each installment of the insurance to be paid under or in consequence of this judgment, and pay the same in equal portions to the plaintiff's attorneys, John B. King and Edward H. S. Martin, for the services of the attorneys for the plaintiff rendered in this suit, payable at the rate of one-tenth of all back payments and one-tenth of all future payments which may hereafter be paid under or in consequence of this judgment.

It Is Further Hereby Ordered that the counter-claimants take nothing by their counter-claim in this cause.

JOHN P. BARNES, *Judge.*

The plaintiff filed notice of appeal from said second judgment December 9th, 1946, in words and figures as follows:

In the District Court of the United States

Notice of appeal

Notice Is Hereby Given that Tillie Zazove, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Seventh Circuit from the final judgment entered in this action on November 29, 1946.

JOHN B. KING,
EDWARD H. S. MARTIN,
Attorneys for Appellant Tillie Zazove.

Address: Room 1140, 10 South LaSalle Street, Chicago 3, Illinois.

9 *Points relied upon*

The points to be relied upon by the plaintiff upon her said appeal last mentioned are as follows:

1. The court erred in holding that as a matter of law the question of amount of each monthly installment of insurance payable to the plaintiff has been conclusively determined and adjudicated by the said judgment on said former appeal.

2. The court erred in holding that the plaintiff is entitled to recover monthly installments of insurance of only $29.50, instead of monthly installments of $48.08.

3. The court erred in entering judgment in favor of the plaintiff for an inadequate amount."

JOHN B. KING,
EDWARD H. S. MARTIN,
Attorneys for Plaintiff, Appellant.
J. ALBERT WOLL,
United States Attorney,
Attorney for United States of America,
Defendant-Appellee.
By WM. M. LYTLE,
Attorney, Department of Justice.

Approved: December 9th, 1946.

BARNES, *District Judge.*

[Clerk's certificates to foregoing transcript omitted in printing.]

12 In the United States Circuit Court of Appeals for the Seventh Circuit

No. 9269—October Term, 1946, April Session, 1947

TILLIE ZAZOVE, PLAINTIFF-APPELLANT
vs.
THE UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Opinion

Filed June 6, 1947

Before SPARKS, KERNER, and MINTON, Circuit Judges

MINTON, Circuit Judge. This is the second appeal in this cause. The only question presently involved is the size of the monthly installments the plaintiff is entitled to receive. The statute involved provides (38 U. S. C. A., Sec. 802 (h)):

"Such insurance shall be payable in the following manner:

"(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments.

"(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary."

To determine the size of the installments to be paid under subsection (2), the Veterans Administration adopted Regula-
13 tion No. 3450 by which the monthly installment for each thousand dollars of insurance is determined by the age of the beneficiary as of the last birthday at the time of the death of the insured, in accordance with a schedule based on the American Experience Table of Mortality, and interest at the rate of three per cent per annum, with not less than 120 months certain. Under the schedule thus promulgated by regulation, the Veterans Administration determined that since the plaintiff-beneficiary was fifty-four years of age at the time the insured died, she was entitled to a monthly installment of $5.90 per thousand dollars of insurance, and since the amount of insurance here involved is $5,000, the total monthly installment to be paid her was $29.50. With this determination the District Court agreed and entered judgment accordingly. From this judgment the plaintiff has appealed.

It is the position of the plaintiff that since she is over thirty years of age, she is entitled to equal monthly installments for 120 months certain, in other words, divide the face value of the policy, $5,000, by 120 months, with interest properly allowed at three percent, under which calculation the plaintiff was entitled to receive $48.08 each month instead of $29.50.

We agree with the construction placed upon subsection (2) by the plaintiff. It seems to us that this subsection is plain and unambiguous and means what is says. The face value of the insurance, plus interest, is to be paid in equal monthly installments over a period of 120 months certain. Nothing is said in the statute about equalizing the sum over the life expectancy of the beneficiary. The regulation does that. In other words, the regulation sets up a formula different than that prescribed by Congress. The Veterans Administration may by regulation carry out the provisions which Congress lays down in the statute, but it may not alter the provisions prescribed by Congress. Congress declares the law. The Administration carries it out. Miller v. United States, 294 U. S. 435, 439, 440, 55 S. Ct. 440, 79 L. Ed. 977; Campbell v. Galeno Chemical Co., 281 U. S. 599, 610, 50 S. Ct. 412, 74 L. Ed. 1063.

After putting this regulation into effect, the Administrator discovered that in the great majority of cases if the beneficiary should die before the expiration of 120 months on the low schedule of payments equalized over the life expectancy of the beneficiary,
14 the Government would not be required to pay the face amount of the policy, not to mention interest. In fact, in the instant case, 120 months at $29.50 a month would amount to only $3,450 on a policy with a face value of $5,000, plus interest. In other words, the serviceman's beneficiary would not receive

what the serviceman had contracted for. For instance, suppose that a first beneficiary who was thirty years of age when the insured died, lived for only five years. The table provides a monthly payment to the beneficiary at the rate of $3.97 per thousand. The first beneficiary and the alternate beneficiary would receive 120 monthly payments at $3.97 per month, or $476.40, instead of $1,000 with interest at three percent properly calculated.

It will be noted that subsection (2) of the statute if construed as the plaintiff contends, and we think the language of the section clearly dictates this construction, provides that if the first beneficiary should live beyond the 120 months, the Government would be liable to continue the payments until such beneficiary dies, for the statute says, "with such payments continuing during the remaining lifetime of such beneficiary." This provision may compel the Government to pay more than the face of the policy, plus interest. Let us take an extreme case of a first beneficiary thirty years of age and assume that she lives not only the ten following years which, under the plaintiff's method of calculation, would entitle her to $1,153.94 per thousand up to the time she became forty years of age, but that she lives to be eighty years of age, in which event she would receive the same sum of $1,153.94 per thousand each succeeding ten years. Thus the Government would pay not only once but five times the face of the policy, with interest.

By the act of September 30, 1944,[1] Congress amended subsection (2) here involved by adding a provision which
10 allowed the Administrator to offer the insured or the beneficiary an optional settlement that would overcome the unjust settlement provided by Regulation No. 3450 where the beneficiary would not receive the face value with interest. In other words, the amendment authorized the Veterans Administration for the first time to provide by regulation for an equalization of the face value of the contract over the lifetime of the beneficiary, but for not less than 120 months. This amendment provided an election which afforded a way out for the Veterans Administration in its unjust administration of the Act under Regulation No. 3450.

[1] "Sec. 6. Section 602 (h) (2) of the National Service Life Insurance Act of 1940 is hereby amended by substituting a colon for the period at the end thereof and adding the following: 'Provided, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect, in lieu of this mode of payment, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract less any indebtedness with such payments continuing throughout the lifetime of such beneficiary: Provided further, that such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months, nor in any case in which payments of insurance installments have been commenced prior to the date of this amendatory Act'" (58 Stat. 762–763, 38 U. S. C. A. Sec. 802 (h) (2)).

No one was compelled to take this method of settlement. It was available if deemed advantageous.

As we understand the position of the Government, it is that by passing the above amendment leaving subsection (2) intact but adding a provision for an optional settlement, Congress intended to approve by silence the regulation as it was applied to the plaintiff. We do not think it follows at all that Congress, because of its silence, intended to adopt the Administrator's regulation on the subject. When Congress enacted this amendment, it did not alter the existing provisions of the law in any manner. It supplemented them with the authorization of an optional settlement to, as the Senate Finance Committee said, "authorize payment of meritorious claims." For aught that appears, Congress may have desired to correct the settlements made below the face value of the contract and to retain the settlements to be made in excess of the face value thereof. For the first time Congress authorized an optional settlement for the equalization of the face value of the contract over the life expectancy of the beneficiary. This method of equalization the Veterans Administration had already put into effect by its invalid regulation.

We do not think Congress approved by silence this invalid regulation of the Veterans' Administration, the promulgation of which was a usurpation of legislative power on its part. The Veterans' Administration had equalized the monthly installments not by using the mathematical formula of the statute which divided the face value of the policy, plus interest, into 120 equal installments, but by distributing the payments over the life expectancy of the beneficiary.

We cannot say that Congress did not intend to be generous with those beneficiaries over thirty years of age who
16 if parents would be at least middle-aged and many of whom would be quite well up in years and in a great majority of the cases struggling to live, for it is the sons of the poor who constitute the majority of the fighting forces. Or the beneficiaries might be young widows with small children whose ten years of monthly payments would end at the most needed time. If Congress chose to be generous, we know of no rule of law that authorizes the Veterans' Administration to inaugurate an economy program. Even if Congress passed the act unwisely, we know of no authority in law that authorizes the Veterans Administration, or even the courts, to correct it. Congress is the judge of its own wisdom, limited only by the Constitution. The generosity of Congress to veterans has never been admitted, officially, to be unwise. The language Congress used was plain. The regulation distorted the language. When Congress sought to correct an unfair settlement

arising under such distortion, it does not follow that it approved by silence the regulation which distorted the statute that was on the side of generosity. Silence must be so compelling as to lead to no other reasonable construction before we are justified in holding that Congress approved an invalid regulation by mere silence. Girouard v. United States, 328 U. S. 61, 69, 70, 66 S. Ct. 826, 90 L. Ed. 776; Ebert Et Al. v. Poston, 266 U. S. 548, 45 S. Ct. 188, 69 L. Ed. 435. See Justice Rutledge's concurring opinion in Cleveland v. United States, 329 U. S. 14, 21, 67 S. Ct. 13, 17, 18, 91 L. Ed. 1.

The judgment of the District Court is reversed and the cause remanded with directions to proceed in accordance with this opinion.

Dissenting opinion

KERNER, Circuit Judge, dissenting.

What was the purpose of Congress in 1944 when it amended subsection (2) of the Act? Granted, that under Regulation No. 3450 if an over-thirty beneficiary (for example, one fifty-four years of age) died before the expiration of the 120 months certain, or even a short time thereafter, he would not receive the face amount of the policy. Such a procedure was directly contrary to the terms of the contract and defeated the intention of the deceased service man. The amendment to subsection (2) changed this patently unfair administration of the Act, and provided an alternative mode of payment at the election of the insured or the beneficiary, consisting of a refund life payment which guaranteed
17 the payment in installments of the full face value of the insurance contract. That it was the intent of Congress to guarantee payment of full face value, even though the beneficiary had to elect such a method, is inherent in the amendment itself.

Whether the amendment can be considered as Congressional approval by silence of Regulation No. 3450 seems immaterial in view of what the amendment does. It permits the beneficiary, if she so elects, to receive the face amount of the contract. She is entitled to and can receive full payment. Hence plaintiff's contention that she is entitled to full payment with interest every ten years is without force. It seems to me that to concur in plaintiff's contention would do violence to the spirit, if not the letter of the statute, which places a limit of $10,000 on the amount of the insurance which could be issued to any one person (§ 602 (q) 38 U. S. C. A. § 802; § 603, 38 U. S. C. A. § 803).

I would affirm the judgment

18 In United States Circuit Court of Appeals

Before Hon. WILLIAM M. SPARKS, Circuit Judge; Hon. OTTO KERNER, Circuit Judge; Hon. SHERMAN MINTON, Circuit Judge.

9260

TILLIE ZAZOVE, PLAINTIFF-APPELLANT

vs.

THE UNITED STATES OF AMERICA, DEFENDANT-APPELLEE

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Judgment

June 6, 1947

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed, and that this cause be, and the same is hereby, remanded to the said District Court with directions to proceed in accordance with the opinion of this Court filed this day.

In United States Circuit Court of Appeals

[Title omitted.]

Order extending time

June 20, 1947

On petition of counsel for the defendant-appellee, it is ordered that the time for filing a petition for rehearing herein be, and is hereby extended to and including July 6, 1947.

Recital as to petition for rehearing and answer thereto

And afterwards, to wit: On the seventh day of July 1947, there was filed in the office of the Clerk of this Court, a Petition for Rehearing, which said petition for Rehearing is not copied herein.

And afterwards, to wit: On the tenth day of July 1947, there was filed in the office of the Clerk of this Court, an Answer to the said Petition for Rehearing, which Answer to the Petition for Rehearing is not copied herein.

19 In United States Circuit Court of Appeals

[Title omitted.]

Order denying petition for rehearing

Aug. 7, 1947

It is ordered by the Court that the Petition for Rehearing of this cause be, and the same is hereby, denied.

20 [Clerk's certificate to foregoing transcript omitted in printing.]

21 Supreme Court of the United States

Order allowing certiorari

Filed December 8, 1947

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 52662. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 432. The United States of America, Petitioner vs. Tillie Zazove. Petition for writ of certiorari and exhibit thereto. Filed November 6, 1947. Term No. 432 O. T. 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947

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No. 432

In the Supreme Court of the United States

OCTOBER TERM, 1947

THE UNITED STATES OF AMERICA, PETITIONER

v.

TILLIE ZAZOVE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 432

THE UNITED STATES OF AMERICA, PETITIONER

v.

TILLIE ZAZOVE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered in the above-entitled case on June 6, 1947.

OPINIONS BELOW

The opinion of the District Court of the United States for the Northern District of Illinois, Eastern Division (R. 6–7), is not reported. The majority and dissenting opinions of the United States Circuit Court of Appeals for the Seventh Circuit (R. 10–14) are reported at 162 F. 2d 443.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 6, 1947 (R. 15–16). A petition for rehearing, seasonably filed (R. 16), was denied on August 7, 1947 (R. 16–17).[1] The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

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[1] The filing of the petition for rehearing on July 7, 1947, was seasonable notwithstanding the fact that the order of the court below on its face extended the time for filing the petition only until July 6, 1947. The petition was mailed from Washington, D. C., on July 3, but could not be officially stamped as received until July 7, since the office of the Clerk of the Seventh Circuit was closed on July 6, which was a Sunday, as well as the two days preceding which were holidays. The Seventh Circuit has, by its Rule 29 (3), adopted Rule 6 (a) of the Federal Rules of Civil Procedure relating to the computation of time and providing in part that if the last day of any period prescribed or allowed by order of the court is a Sunday or a holiday, the period runs until the end of the next day which is neither a Sunday nor a holiday. Both the court below and counsel for the parties obviously read the order in light of Rule 6 (a), since no question in regard to filing was raised in the court below and the court did not dismiss the petition for tardy filing. Cf. *Texas & Pacific Railway Co.* v. *Murphy*, 111 U. S. 488. Consequently the later denial by the Circuit Court of Appeals of a motion to amend its order *nunc pro tunc* to read July 7 rather than July 6 is indicative of that court's understanding that the petition for rehearing was timely filed, and that the later motion was therefore unnecessary.

QUESTION PRESENTED

Whether, in computing the amount of the monthly installments to be paid to a beneficiary 30 or more years of age for 120 months certain, such payments to continue for the beneficiary's remaining lifetime in accordance with Section 602 (h) (2) of the National Service Life Insurance Act of 1940, the Veterans' Administration was required by the statute to disregard the beneficiary's life expectancy, to divide the face value of the policy plus interest by 120, the number of installments certain, and to pay the quotient so determined not only for the 120 months certain but also for the remaining lifetime of the beneficiary, where such disregard of life expectancy would require that, contrary to accepted actuarial principles, two, three, four or even five times the face value of the policy plus interest would be paid in most cases.

STATUTES AND REGULATION INVOLVED

The pertinent provisions of the National Service Life Insurance Act of 1940 (Part I, Title VI of the Second Revenue Act of 1940, Act of October 8, 1940, c. 757, 54 Stat. 974, 1008, 38 U. S. C. 801 *et seq.*) and of the 1944 and 1946 amendments thereto (Act of September 30, 1944, c. 454, 58 Stat. 762; Act of August 1, 1946, c. 728, 60 Stat. 781) are set forth in Appendix B, *infra*, pp. 30–40. Regulation 3450 of the Veterans' Administration, 6 Fed. Reg. 1162, 1166, 38 C. F. R. (Supp. 1941) 10.3450, is set forth in Appendix C, *infra*, pp. 41–42.

STATEMENT

On May 7, 1941, Adolph B. Schwartz, while on active military service, applied for and was granted a $5,000 policy of National Service Life Insurance in which respondent was designated as beneficiary and her relationship to the insured was stated to be that of an "aunt," whereas in fact she was not the insured's aunt. Upon his death in May 1943, the Veterans' Administration refused to pay respondent the benefits of the insurance policy on the ground that she was neither his aunt nor had stood *in loco parentis* to the insured, and hence was not an eligible beneficiary under Section 602 (g) of the National Service Life Insurance Act of 1940 as it then stood (54 Stat. 1008, 1010, 38 U. S. C. 802 (g)). Respondent accordingly brought suit on August 9, 1944, in the District Court of the United States for the Northern District of Illinois, Eastern Division, in accordance with Section 617 of the National Service Life Insurance Act of 1940 (38 U. S. C. 817, *infra*, pp. 34–35), to recover the insurance benefits as the designated beneficiary of the insured. A trial was had without a jury and the District Court then held that as a matter of law the *in loco parentis* relationship could not have existed and entered judgment against respondent. (R. 2–4.) On appeal, the Circuit Court of Appeals for the Seventh Circuit held as a matter of law that the relationship could and did exist. Accordingly, it re-

versed the District Court's judgment and remanded the cause for further proceedings. *Zasove* v. *United States*, 156 F. 2d 24.

On the remand the Veterans' Administration offered to pay respondent in accordance with its Regulation 3450 (*infra*, pp. 41–42). That Regulation contained a schedule of monthly installments to be paid under Section 602 (h) (2), *infra*, p. 30, which provided that insurance the beneficiary of which was 30 or more years of age should be paid "in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary."[2] These payments were calculated in that Regulation on the basis of the American Experience Table of Mortality,[3] as required by

[2] Under this method of payment, the United States is obligated to pay at least 120 monthly installments. If the beneficiary lives beyond ten years (the period of guaranteed payments), he is entitled to receive monthly installments for his remaining lifetime. If he fails to live ten years, the unpaid guaranteed installments are paid to the next in line, usually the contingent beneficiary.

[3] This table was constructed in the year 1868 from the experience of the Mutual Life Insurance Company of New York during a period of about 20 years. It has four columns, showing for each age on the basis of 100,000 (1) number living, (2) number dying, (3) number dying per 1,000 (Rate of Mortality) and (4) expectation of life. Column (3) is the basic column and is used in making actuarial computations. Column (4) is, as are the other two columns, derived from column (3) and is, generally, merely another way of expressing the same concept. Although not used in life insurance computations, the term "expectation of life" is

Section 602 (e) of the Act (*infra*, p. 30), plus 3% interest per annum. In the case of respondent herein, who was 54 years of age at the death of the insured, the monthly installments amounted to $29.50, at the rate of $5.90 for each $1,000 of insurance. Respondent, however, claimed that Regulation 3450 was void and unauthorized. She contended that under Section 602 (h) (2) the full face value of the policy plus 3% interest per annum was to be paid in 120 equal monthly installments, or $9.613 per month for each $1,000 of insurance ($48.08 for the $5,000 policy of which respondent was the beneficiary), and that she was entitled to such monthly payments for her remaining lifetime.

The District Court rejected respondent's contention and held that she was entitled to monthly payments in the amount of $29.50 per month since May 12, 1943, for 120 month certain, which payments were to continue for the remaining of her natural life (R. 7). It also ordered the United States to pay respondent the unpaid installments which had already accrued (R. 7–8).

On appeal, the court below reversed the judgment of the District Court and remanded the cause for further proceedings on the ground that

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familiar to laymen, and hence we will use it here. For general discussion of the American Experience Table of Mortality, see MacLean, *Life Insurance* (5th ed., 1939) 83–88; Elston, *Sources and Characteristics of the Principal Mortality Tables* (2d ed., 1932) 60–62.

Regulation 3450 did not comply with Section 602 (h) (2) of the National Service Life Insurance Act of 1940. It held that that Section required the amount of the monthly installments to be paid to beneficiaries 30 or more years of age at the time of the death of the insured to be computed by dividing the face value of the policy plus 3% interest per annum by 120 without regard to the beneficiary's expectation of life at the insured's death (R. 11), and this despite the fact that the payments were to continue for the remainder of the beneficiary's life; that since the total of the 120 guaranteed payments, as computed by the Veterans' Administration, was not equal to the face value of the policy, plus interest, the insured's beneficiary did not receive what the insured had contracted for (R. 12); that Congress in the amendment of September 30, 1944, adding the refund life interest option[1] at the suggestion of the Veterans' Administration, did not thereby approve the construction of Section 602 (h) (2) contained in Regulation 3450 (R. 12–13); and that although these payments might in extreme cases require the Government to pay not only one but five times the face value of the

[1] Under this option, the sum of the guaranteed number of installments is equal to the face value of the contract. These installments continue for the remaining lifetime of the beneficiary, if he lives beyond the guaranteed period. The amount of each installment is, of course, lower than it would be under Regulation 3450.

policy, Congress, in its generosity to the beneficiaries of veterans, might have intended such a result (R. 12, 13). Judge Kerner dissented on the ground that respondent's contention "would do violence to the spirit, if not the letter of the statute" (R. 14).

SPECIFICATION OF ERRORS TO BE URGED

The circuit court of appeals erred:

1. In holding that Regulation 3450 set up a formula different from the one prescribed by Section 602 (h) (2) of the National Service Life Insurance Act of 1940.

2. In holding that Section 602 (h) (2) plainly and unambiguously required that the face value of the insurance plus 3% interest per annum was to be paid in equal monthly installments over a period of 120 months certain.

3. In holding that under Regulation 3450 the beneficiary who died before the expiration of 120 months did not receive what the insured had bargained for.

4. In holding that "nothing is said in the statute about equalizing" the face value of the policy plus interest over the life expectancy of the beneficiary.

5. In failing to hold that Congress by the 1944 amendment to the Act approved Regulation 3450.

6. In reversing the judgment of the district court.

REASONS FOR GRANTING THE WRIT

The court below, in a decision of unprecedented importance in the field of veterans' insurance, has held that Regulation 3450 of the Veterans' Administration contravenes Section 602 (h) (2) of the National Service Life Insurance Act of 1940 and has in effect construed that section as "plainly and unambiguously" imposing liabilities totally disproportionate to the premiums paid and beyond the ability of the National Life Insurance Fund ultimately to discharge. This holding ignores the plain meaning of the statutory method of settlement as understood in the field of commercial life insurance; violates fundamental actuarial principles; is inconsistent with other sections of the National Service Life Insurance Act of 1940; and disregards the consistent administrative construction by the Veterans' Administration of Section 602 (h) (2), which Congress in considering subsequent amendments to the Act indicated was in accord with its intention. Moreover, the decision below, by its violation of fundamental and universally accepted actuarial principles, increases the potential liabilities to be satisfied out of the National Service Life Insurance Fund by tens of billions of dollars in excess of the premiums paid in. Therefore, unless these billions are supplied by Congress, the Fund will ultimately be forced to default on its obligations. Accordingly, we submit that the de-

cision below presents a question of vital importance which should be reviewed by this Court.

1. *Regulation 3450 is valid.* a. Even if the language of Section 602 (h) (2) does not clearly connote to a layman that the beneficiary's life expectancy must be considered in computing the amount of the monthly installments, it is universally interpreted to have that meaning in commercial life insurance. Consequently it is in this technical sense that the statutory provision must be understood and interpreted. Cf. *Massachusetts Protective Ass'n* v. *United States*, 114 F. 2d 304, 311 (C. C. A. 1).

Commercial life insurance companies in computing the amount of the monthly installment under this general type of settlement (life annuity with guaranteed minimum number of payments), which is commonly offered and well understood, have uniformly considered the beneficiary's life expectancy, without question either by the courts or state insurance commissioners. This method of settlement was in commercial use in 1940, the year in which the National Service Life Insurance Act became law (see, e. g., *The Handy Guide to Standard and Special Contracts* (1940), pp. 294–296 (Equitable Life Assur. Society), 613, 614 (Metropolitan Life Ins. Co.), 766, 768 (New York Life Ins. Co.), 816 (Northwestern Mutual Life Ins. Co.), 1005 (Prudential Ins. Co. of America)), and has continued down to the present time (*ibid.* (1947), pp. 270–271, 273 (Equitable), 567, 568

(Metropolitan), 672, 673 (New York), 705, 707 (Northwestern), 843 (Prudential)).[5]

The inclusion of the beneficiary's life expectancy in the computation of the monthly installments is required by fundamental actuarial principles. A commercial insurance company, in obligating itself to pay the face value of the policy (with interest) in monthly installments, must consider the life expectancy of the beneficiary. The life expectancy of a young person is naturally greater than that of an older person, so that if approximately the same total amount is to be paid to each beneficiary, the amount of each installment must be greater for a person with a short life expectancy than for a person with a longer life expectancy. In addition, although it is unpredictable how long a

[5] The language of Section 602 (h) (2) is virtually identical with that of the similar options of the commercial insurance companies:

E. g., Equitable's option reads: "LIFE INCOME OPTION—Made payable in equal * * * monthly installments for ten or twenty years certain, with payments continuing during the remaining lifetime of the person upon whose life the income depends * * *."

Metropolitan's option reads: "(LIFE INCOME—10 YEARS CERTAIN).—By the payment of equal monthly payments * * * to the * * * beneficiary, * * * for a fixed period of 10 years and for so long thereafter as the payee shall survive, * * *."

New York's option reads: "LIFE INCOME WITH PAYMENTS GUARANTEED FOR A FIXED PERIOD:—The proceeds * * * may be made payable in equal * * * monthly installments for a fixed period of ten or twenty years, * * * and for the remaining lifetime of the payee, * * *."

particular individual will live, the life expectancy of a large group of persons of the same age is predictable. Consequently, the amount of the monthly installment is based upon the life expectancy of the group, and the company, by an averaging process, is assured that it will not on the average be called upon to pay more than the face value of the policy plus interest, since the losses sustained when one beneficiary lives beyond his life expectancy will be offset by the gains made when another dies prematurely.

Contrary to the belief of the court below, there is no injustice involved in so computing the monthly installments, even though some beneficiaries ultimately receive less than the full face value of the policy plus interest. The situation must be viewed at the time of the insured's death. At that time, the insured's contract for insurance matures, and the beneficiary is entitled to the face value of the policy. An annuity with 120 guaranteed payments is in effect established for the beneficiary and regardless of when the beneficiary dies, be it the next day, 10, 20, or 50 years thereafter, the complete obligation under the annuity is discharged so long as the first beneficiary receives monthly installments throughout his life time, and if, should the first beneficiary die prior to receiving the full number of guaranteed installments, the next in line receives the balance. In these circumstances, the beneficiary has received

the full benefits of the contract purchased for him by the insured.

If the beneficiary's life expectancy is ignored, as the court below held was required by Section 602(h)(2), and only the guaranteed minimum period is considered in computing the monthly installments, then payments equaling the full face value of the policy plus interest will be the minimum paid in each instance as a matter of course. However, in nearly all cases, the minimum guaranteed period is below the beneficiary's life expectancy and the beneficiaries will live beyond the minimum guaranteed period. Hence, more than the face value of the policy plus interest will have to be paid. But in this situation, there is no gain to draw on to offset the additional liabilities. A commercial insurance company, faced with such a ruling, would ultimately be forced to draw upon reserves held for other liabilities or default in its payments.

Moreover, under the ruling below, the beneficiary will receive more than his insured had contracted for, since if the monthly installments are calculated on the basis of the 120 guaranteed payments without regard to the beneficiary's life expectancy, then the actual value of the policy at the death of the insured is considerably in excess of the face value of the policy. As shown in Appendix A, *infra*, pp. 26–29, under the construction below, the actual value of the policy, based on the

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experience of the Veterans' Administration, ranges for $3232 for a female at the age of 10* to $1177 for a male at the age of 70 on each $1000 face value of the policy. In the case of respondent here, the actual value is $1947.

b. Other provisions of the Act make it clear that the Veterans' Administration was required, in calculating the schedule of monthly installments payable under Section 602 (h) (2), to consider the beneficiary's life expectancy.

(i) Section 602 (e) of the Act (Appendix B, *infra*, p. 30) provides that in addition to all premiums, "all cash, loan, paid up, and extended values, and all other calculations in connection with such insurance, shall be based upon said American Experience Table of Mortality * * *." The all-inclusive nature of the language here used plainly encompasses the calculations of monthly installments due to beneficiaries under Section 602 (h) (2), and hence required the Veterans' Administration to base its calculations of the monthly installments upon the American Experience Table of Mortality.

(ii) The maximum insurance issuable under the Act (Section 602 (q)) Appendix B, *infra*, p. 32) or in combination with United States Government Life Insurance (Section 603) (Appendix B,

* Under the 1946 amendment this option has been continued and the restriction of its availability to beneficiaries 30 or more years of age has been removed.

infra, p. 32) is expressly limited to $10,000. The Veterans' Administration has so limited the face value of all insurance issued by it under the Act, but as we have shown, *supra*, pp. 13–14, the actual value of every policy is greatly increased in excess of that limit under the construction below.

(iii) Section 605 (b) of the Act (Appendix B, *infra*, p. 33) authorizes the Administrator to set aside out of the National Service Life Insurance Fund "such reserve amounts as may be required under accepted actuarial principles, to meet all liabilities under such insurance." Under the ruling below, such reserves would be inadequate to meet all liabilities, since as we have shown, the actual payments made would in large number of cases exceed the face value of the policy and there would be no gains available to offset additional liabilities. If Congress intended the Veterans' Administration not to follow accepted actuarial principles in computing monthly installments under Section 602 (h) (2), so that its liabilities thereunder should not conform to accepted actuarial principles, it seems incongruous that Congress should have required that the reserves set up to meet these liabilities should be so computed.

(iv) Section 602 (h) (1) of the Act (Appendix B, *infra*, p. 30), which deals with the method of settlement to beneficiaries under 30 years of age at the time of the insured's death, provides for 240 payments certain and no more. There is no

room for any construction of that Section so that the beneficiaries would receive more than the face of the policy plus interest. If accepted actuarial principles are applied, the value of both the settlements would be the actuarial equivalent. Under the construction below, however, while the actual value of a policy to a beneficiary under 30 still equals the face value, the actual value of the policy to a beneficiary 30 or more would on the average be about double the face value.

Moreover, if, as Congress has indicated in the Act, the National Service Life Insurance Fund was in all respects, except those specifically enumerated (see *infra*, p. 23), to be self-supporting, the Veterans' Administration in establishing premium rates should have allowed for these additional payments to beneficiaries 30 or more years of age. The premiums as now set are adequate to meet liabilities equal to the face value of the policy. If, however, the premiums had been made larger, the insured whose beneficiary was under 30 would be making contributions to offset the losses to beneficiaries 30 or over. There is no way of setting premiums at different levels dependent on the age of the particular beneficiary at the death of the particular insured. All that can be done is set an average premium.

(v) These provisions support, we believe, the propriety of the Veterans' Administration's action in calculating the monthly installments due

to beneficiaries 30 years old or over, in accordance with the American Experience Table of Mortality, in order that the actual value of a policy at the time of the death of the insured be no more than the legal maximum face value of $10,000, that an adequate reserve could be set aside under accepted actuarial principles, and that the actual value of the policy not be influenced by the accident of whether the beneficiary was less or more than 30 years of age at the insured's death.

c. Regulation 3450 (Appendix C, *infra*, pp. 41–42) was issued on February 25, 1941, shortly after the National Service Life Insurance Act became law. 6 Fed. Reg. 1162, 1166, 38 C. F. R. (Supp. 1941) 10.3450. Since that time, the Veterans' Administration has followed that Regulation consistently and on the basis thereof has settled many thousands of claims aggregating about two billion dollars and has paid several hundreds of thousands of monthly installments. The Regulation has been adopted in connection with the 1946 amendment continuing this method of payment as one of four options. See *infra*, p. 39; Regulation 3479, 9 Fed. Reg. 13668–13669; 38 C. F. R. (Supp. 1944) 10.3479. This court has already recognized that the consistent administrative construction given insurance acts by the Veterans' Administration is entitled to great weight and "is not to be overturned unless clearly wrong, or unless a different construction is plainly required." *United*

States v. *Citizens Loan & Trust Co.*, 316 U. S. 209, 214; *United States* v. *Jackson*, 280 U. S. 183, 193. We have already shown that there is, at the very least, a thoroughly reasonable basis for the construction given Section 602 (h) (2). Hence, since that construction is not clearly wrong, the court below erred in setting it aside.

d. The legislative history of the 1944 and 1946 amendments to the Act, although subsequent to the maturity of respondent's claim, demonstrates, we believe, that Congress was aware of the construction given to Section 602 (h) (2) by the Veterans' Administration and agreed that that construction accorded with its intention. Cf. *Old Colony R. Co.* v. *Commissioner*, 284 U. S. 552, 557; *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 500.[1]

(i) In 1944, the Administrator of the Veterans' Administration sent to Congress a proposed bill (S. 2015, 78th Cong., 2d sess.), accompanied by a letter, recommending certain amendments to the Act. It was referred to the Senate Committee on Finance, which adopted the Administrator's letter as its own report and recommended the passage

[1] There appears to be very little legislative history in connection with the Act. It was passed as Title VI of the Second Revenue Act of 1940, imposing excess profit taxes, and most of the Congressional discussion and comments on the Act deals with the excess profits tax. The only reference is contained in the House Conference Report where the provisions of the Act are summarized. H. Rep. 3002, 76th Cong., 3d sess., pp. 62–63.

of the bill without amendment. Sen. Rep. 1105, 78th Cong., 2d sess.; 90 Cong. Rec. 7983–7984. The bill was so passed. 90 Cong. Rec. 7984, 8138, 8153; Act of September 30, 1944, 58 Stat. 762, 763. Section 6 of the bill as enacted (Appendix B, *infra*, pp. 35–36) amended Section 602 (h) (2) by permitting the insured or his beneficiary to elect, in lieu of the life annuity with 120 payments certain, a "refund life income."* The Administrator's letter recommending the adoption of the alternative method of settlement pointed out that under Section 602 (h) (2) the total installments paid did not in all cases equal the face value of the policy and that, in extreme cases, hardship resulted. Sen. Rep. 1105, 78th Cong., 2d sess., p. 2. From this letter it also appeared that at least until the beneficiary was over 60 at the time of the death of the insured, the total guaranteed installments to be paid under the old method of settlement was below the face value of the policy (*ibid.*, p. 3). Congress was thus apprised of the construction placed on Section 602 (h) (2) by the Veterans' Administration. Since it knew of the construction given Section 602 (h) (2) by the Veterans' Administration, its failure to alter that Section of itself indicates that Congress acquiesced in that construction. Cf. *Old Colony R. Co.* v. *Commissioner*, 284 U. S. 552, 557; *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 500.

* Section 5 (Appendix B, *infra*, p. 35) added a similar option to Section 602 (h) (1).

The addition of the alternative method of settlement, moreover, demonstrates that Congress not only acquiesced in that construction but affirmatively approved it. If Congress had intended that Section 602 (h) (2) be given the meaning adopted by the court below and intended that the full face value of the policy be paid in each instance, there would have been no necessity for adopting the alternative method of settlement. The adoption of the alternative method of settlement becomes reasonable only under the construction given by the Veterans' Administration since only then could less than the full face value of the policy be paid out to each beneficiary and the hardship discussed in the Administrator's letter and the Senate Report result. The court below failed to appreciate that fact when it put aside this legislative history as irrelevant (R. 12-13).

(ii) The legislative history of the 1946 amendment (Insurance Act of 1946, c. 728, 60 Stat. 781) similarly demonstrates that Congress approved of Regulation 3450. Section 8 of the House bill (H. R. 6371, 79th Cong., 2d sess.) again proposed to amend Section 602 (h) (2). It was recognized again, this time by the House Committee on World War Veterans' Legislation, that the aggregate amount of installments actually paid under the life annuity with 120 payments certain might in many instances amount to much less than the face of the policy (H. Rep. 2002, 79th Cong., 2d sess.,

p. 5). Moreover, the Committee recommended the addition of a new Section 602 (t) providing four optional methods of settlement for policies thereafter maturing: (1) lump sum, (2) in equal monthly installments of from 36 to 240 in number, in multiples of 12, (3) 120 payments certain, with payments continuing during beneficiary's remaining lifetime without regard to the age of the beneficiary at the insured's death, and (4) refund life income. It should be noted that the language of option (3) is identical with that contained in Section 602 (h) (2). And in connection with option (3) (and option (4)), the Committee recommended that firms, corporations, etc., should not be permitted to elect these options "because payments in such cases could not be based upon *the life of any individual* * * *" [italics supplied] (*ibid.*, pp. 6–7). The Senate Committee on Finance, although it amended H. R. 6371 by complete substitution, effected no pertinent changes in the sections with which we are here concerned.[9] That bill also recommended a new Section 602 (t), containing the same four optional settlements, and recommended the same restriction, and for the same reason, in regard to option (3) (and option (4)) as recommended by the House Committee. See Sen. Rep. 1705, 79th Cong., 2d sess., p. 6.

[9] It allowed additional time beyond that fixed in the House bill within which beneficiaries could select the refund life income. Section 5 of H. R. 6371 (Calendar 1740), 79th Cong., 2d sess.; Sen. Rep. 1705, 79th Cong., 2d sess., p. 4.

The continued inclusion of a life annuity with 120 payments certain as one of the new four optional settlements manifests, we believe, Congressional approval of the construction placed thereon by the Veterans' Administration. It is clear that the total payments under three methods of settlement, other than option (3), were not on the average to exceed the face value of the policy at the time of the insured's death. In light thereof, it would be unreasonable to attribute an intent to Congress to permit in option (3) a method of settlement which, on the construction below, would have an actual value at the death of the insured far in excess of its face value. If Congress did so intend, the other options become meaningless for all practical purposes, since it could reasonably be expected that option (3), because of its disproportionate value compared to the premiums paid and to the other options, would be selected in the vast majority of cases, particularly since the insured would be in a position to designate the youngest beneficiary possible consistent with his circumstances.

e. We have shown that the National Service Life Insurance Fund could not bear the additional costs resulting from the construction below of Section 602 (h) (2). The court below, however, attributed the additional costs which would be incurred under that construction to the generosity of Congress to veterans' beneficiaries (R. 13).

Apart from being inconsistent with the provisions of the Act already referred to, *supra*, pp. 14–17, this holding does not square with other provisions of the Act, in which Congress indicated the extent of its generosity. In the National Service Life Insurance Act of 1940, it is stated specifically which of the costs of the plan the United States would bear. Section 606 of the Act (Appendix B, *infra*, p. 33) provided that the United States would bear the cost of administration, and authorized the expenditure of moneys already appropriated therefor. Section 607 (a) of the Act (Appendix B, *infra*, p. 33) provided that the United States would bear the excess mortality cost and the cost of the waiver of premiums, and Sections 607 (b), (c) (Appendix B, *infra*, pp. 33–34) authorized the transfer of funds therefor from the National Service Life Insurance appropriation to the National Service Life Insurance Fund. These are the only costs which the House Conference Report on this Act (H. Rep. 3002, 76th Cong., 3d sess., p. 62) mentions as being assumed by the United States. And in the subsequent Appropriation Acts these were the sole specific liabilities for which appropriations were made. See, *e. g.*, Independent Offices Appropriation Act, 1945, Act of June 27, 1944, c. 286, 58 Stat. 361, 383. There is no similar assumption, or provision for payment of costs, of the additional liabilities which the Fund would have to bear under Section 602 (h) (2) as construed below.

2. *From a financial standpoint, this case is of vital importance to the Veterans' Administration and to the United States.* As appears in the letter from General Bradley, Veterans' Administrator, Appendix A, *infra,* pp. 26–29, if the decision below is not reversed, the liabilities of the National Service Life Insurance Fund would be increased by about 1.8 billions of dollars on policies which have already matured. Moreover, there are outstanding in full force and effect, policies bearing a face value totalling 35 billions of dollars. It is estimated by the Administrator (*infra,* p. 28) that if the decision below be allowed to stand, the actual value of these policies could reach an aggregate of 97 billions of dollars, an increase of 62 billions in excess of face value. It is further estimated (*infra,* pp. 28–29) that if ten per cent of the policies lapsed were reinstated, the increased liabilities in excess of the face value of the policy would be about 19.7 billion dollars, and in light of the disproportionate value of option (3), reinstatements in excess of ten percent may reasonably be anticipated.

The decision below, which requires the United States to assume such astronomically increased liabilities, is one which imperatively requires review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted.

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER 1947.

APPENDIX A—LETTER FROM THE VETERANS' ADMINISTRATOR

VETERANS ADMINISTRATION,
Washington 25, D. C., October 24, 1947.

The Honorable PHILIP B. PERLMAN
The Solicitor General
The Department of Justice
Washington 25, D. C.

DEAR MR. SOLICITOR GENERAL: This is in response to your request for information as to the probable effect on National Service Life Insurance if payments thereunder are required to be made in accordance with the decision of the Seventh Circuit Court of Appeals in the case of *Zazove* vs. *The United States.*

If settlement is required to be made in this manner, each beneficiary of National Service Life Insurance who is entitled to receive payment under a life income with instalments guaranteed for 120 months, would receive $96.10 a month on a policy maturing by death for $10,000, irrespective of the age of the beneficiary at the death of the insured. It should be noted that for insurance maturing prior to August 1, 1946, this settlement was not available to beneficiaries under age 30 at the death of the insured, but for insurance maturing since that date it is available to all beneficiaries. Although age would not be a factor in determining the amount of the instalments, it would be a factor in determining the value of the in-

come as of the date of the insured's death, since that value depends in part upon the length of the time the beneficiary may be expected to live to receive the income, and that length of time decreases with age. It also varies as to whether the beneficiary is a man or a woman, being, on the average, longer for women than for men of the same age. The following table gives estimates of the value of the income for various ages, male, and female, as of the date of the insured's death.

Age of payee at death of insured	Value of $10.10 per month for life, 120 months certain	
	Male	Female
10	$31,572	$32,319
[illegible]	29,338	30,208
[illegible]	25,600	27,758
40	23,378	24,743
50	19,473	21,109
54	17,780	19,473
60	15,257	16,930
70	11,775	12,973

The values are based on the actual mortality of National Service Life Insurance beneficiaries under the life income optional settlements, with interest assumed at the rate of 3% a year.

On the approximately 2.1 billion dollars of death claims already incurred and now being settled under the life income with instalments guaranteed for 120 months, it is estimated that the additional liability that would result if settlement is required to be made as indicated in the Zazove opinion would amount to approximately 1.8 billion dollars, using the same assumptions as above.

In estimating the potential liability on policies now in force, and yet to mature, certain additional assumptions have to be made. For example, it is

not unlikely that most of those now carrying term insurance would convert to a permanent plan, such as Ordinary Life. Also, many of those having insurance on an endowment plan would probably attempt to convert to a whole life plan since the extraordinary values that would result from the settlement referred to could be realized only when a policy matures as a death claim, and not when it matures as an endowment. It is also necessary to make some assumptions as to the probable age and sex of the beneficiary at the death of the insured. Referring to the values shown above, it is apparent that the value of the income is greatest at the youngest ages and is greater for women than for men of the same age. Thus it might be expected that in order to derive the greatest value, most insureds would name a relatively young woman or a child as beneficiary. Assuming, then, that the insurance now in force, estimated at 35 billions, would all be held to mature at death and that the typical beneficiary would be a woman aged 30, say, at the death of the insured, and that all policies would be settled under the life income option with instalments guaranteed for 120 months, the potential liability might be about 97 billion dollars instead of 35 billion dollars, an increase of 62 billions. It should be pointed out that the increase would not all take place at once. It would be spread over many years as the policies matured one by one as death claims.

Another major consideration is the potential additional liability in respect to reinstatement of lapsed policies. It is impossible, of course, to foretell how much National Service Life Insur-

ance now lapsed would be reinstated. If 10% of all lapsed policies were reinstated, the potential additional liability would be about 19.7 billion dollars, on the basis of the assumptions already made. If some different percentage were reinstated, the potential additional liability would be in proportion.

Very truly yours,

[s] Omar N. Bradley

OMAR N. BRADLEY,
General, U. S. Army,
Administrator.

APPENDIX B—STATUTES INVOLVED

1. The National Service Life Insurance Act of 1940 (Part I, Title VI of the Second Revenue Act of 1940, Act of October 8, 1940, c. 757, 54 Stat. 974, 1008; 38 U. S. C. 801 *et seq.*) provides in pertinent part:

SEC. 602.

* * * * * *

(e) The premium rates for such insurance shall be the net rates based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum. All cash, loan, paid up, and extended values, and all other calculations in connection with such insurance, shall be based upon said American Experience Table of Mortality and Interest at the rate of 3 per centum per annum.

* * * * * *

(h) Such insurance shall be payable in the following manner:

(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments.

(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly instalments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary.

* * * * * *

(m) The Administrator shall, by regulations, prescribe the time and method of payment of the premiums on such insurance, but payments of premiums in advance shall not be required for periods of more than one month each, and may at the election of the insured be deducted from his active service pay or be otherwise made.

(n) Upon application by the insured and under such regulations as the Administrator may promulgate, payment of premiums on such insurance may be waived during continuous total disability of the insured which commenced subsequent to the effective date of such insurance and which has existed for six consecutive months or more prior to the attainment by the insured of the age of sixty years, effective as of the due date of the monthly premium becoming payable on or after the first day of the seventh consecutive month of such disability: *Provided,* That application for waiver is made while the insurance is currently kept in force by the payment of premiums, and the insured furnishes proof satisfactory to the Administrator showing that he is and has been continuously totally disabled for six or more months prior to attaining sixty years of age. Any waiver granted by the Administrator under this subsection shall not become effective prior to the date of application therefor; except that, in the discretion of the Administrator, it may be made effective at any time within a period of not more than six months prior to such date but in no event prior to the first day of the seventh month of such continuous disability. Any premiums tendered to cover a period during which such waiver is effective shall be refunded. The

Administrator shall provide by regulations for reexaminations of beneficiaries under this subsection and, in the event that it is found that an insured is no longer totally disabled, the waiver of premiums shall cease as of the date of such finding and the policy of insurance may be continued by payment of premiums as provided in said policy. Premium rates shall be calculated without charge for the cost of the waiver of premiums herein provided and no deduction from benefits otherwise payable shall be made on account thereof.

* * * * *

(q) Such insurance shall be issued in any multiple of $500 and the amount of such insurance with respect to any one person shall be not less than $1,000 or more than $10,000.

SEC. 603. No person may carry a combined amount of National Service Life Insurance and United States Government life insurance in excess of $10,000 at any one time.

SEC. 604. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this part, to be known as the National Service Life Insurance appropriation, for the payment of liabilities under National Service Life Insurance. Payments from this appropriation shall be made upon and in accordance with awards by the Administrator.

SEC. 605. (a) There is hereby created in the Treasury a permanent trust fund to be known as the National Service Life Insurance Fund. All premiums paid on account of National Service Life Insurance

shall be deposited and covered into the Treasury to the credit of such fund, which, together with interest earned thereon, shall be available for the payment of liabilities under such insurance, including payment of dividends and refunds of unearned premiums. Payments from this fund shall be made upon and in accordance with awards by the Administrator.

(b) The Administrator is authorized to set aside out of such fund such reserve amounts as may be required under accepted actuarial principles, to meet all liabilities under such insurance; and the Secretary of the Treasury is hereby authorized to invest and reinvest such fund, or any part thereof, in interest-bearing obligations of the United States or in obligations guaranteed as to principal and interest by the United States, and to sell such obligations for the purposes of such fund.

SEC. 606. The United States shall bear the cost of administration in connection with this part, including expenses for medical examinations, printing and binding, and for such other expenditures as are necessary in the discretion of the Administrator. The appropriations made for the Veterans' Administration for the fiscal year 1941 for administrative expenses shall be available for the payment of such costs of administration under this part.

SEC. 607. (a) The United States shall bear the excess mortality cost and the cost of waiver of premiums on account of total disability traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator.

(b) Whenever benefits under such insurance become payable because of the death

of the insured as the result of disease or injury traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator, the liability for payment of such benefits shall be borne by the United States in an amount which, when added to the reserve of the policy at the time of death of the insured, will equal the then value of such benefits under such policy. The Administrator is authorized and directed to transfer from time to time from the National Service Life Insurance appropriation to the National Service Life Insurance Fund such sums as may be necessary to carry out the provisions of this section.

(c) Whenever the premiums under such insurance are waived as provided in section 602 (n) because of the total disability of the insured as the result of disease or injury traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator, the premiums so waived shall be paid by the United States and the Administrator is authorized and directed to transfer from time to time an amount equal to the amount of such premiums from the National Service Life Insurance appropriation to the National Service Life Insurance Fund.

* * * * *

Sec. 617. In the event of a disagreement as to claim arising under this part, suit may be brought in the same manner and subject to the same conditions and limitations as are applicable to United States Government (converted) life insurance under the provisions of sections 19 and 500 of the World War Veterans' Act, 1924, as amended: *Provided,* That, in any such suit the

decision of the Administrator as to waiver or non-waiver of premiums under Section 602 (n) shall be conclusive and binding on the court.

2. The 1944 Amendment (Act of September 30, 1944, c. 454, 58 Stat. 762) to the National Service Life Insurance Act of 1940 provides in pertinent part:

> Sec. 5. Section 602 (h) (1) of the National Service Life Insurance Act of 1940 is hereby amended by substituting a colon for the period at the end thereof and adding the following: "*Provided*, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect in lieu of this mode of payment, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: *Provided further*, That such optional settlement shall not be available in any case in which payments of insurance installments have been commenced prior to the date of this amendatory Act."
>
> SEC. 6. Section 602 (h) (2) of the National Service Life Insurance Act of 1940 is hereby amended by substituting a colon for the period at the end thereof and adding the following: "*Provided*, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured

or the beneficiary to elect, in lieu of this mode of payment, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract less any indebtedness with such payments continuing throughout the lifetime of such beneficiary: *Provided, further,* That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months, nor in any case in which payments of insurance installments have been commenced prior to the date of this amendatory Act."

3. The 1946 amendment (Act of August 1, 1946, c. 728, 60 Stat. 781) to the National Service Life Insurance Act of 1940 provides in pertinent parts:

SEC. 5. (a) So much of subsection (h) of section 602 of the National Service Life Insurance Act of 1940, as amended, as precedes paragraph (3) thereof is hereby amended to read as follows:

"(h) Insurance maturing prior to the date of enactment of the Insurance Act of 1946 shall be payable in the following manner:

"(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments: *Provided,* That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract author-

izing the insured or the beneficiary to elect in lieu of this mode of payment and prior to the commencement of payments, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: *Provided further,* That in any case in which insurance benefit payments were commenced prior to September 30, 1944, the beneficiary, whether or not the first beneficiary, shall have the right to elect to receive a refund life income, as provided in such optional settlement, payable in monthly installments adjusted as of the date of the maturity of such policy, credit being allowed for payments previously made on the insurance. The right of election with respect to cases in which benefit payments were commenced prior to September 30, 1944, shall terminate two years after the date of enactment of the Insurance Act of 1946. The Administrator is directed to send, within one year after the date of enactment of the Insurance Act of 1946, to each beneficiary of insurance on which payments were commenced prior to September 30, 1944, a notice explaining the right of election. Any such notice shall be sent by registered mail addressed to the last known address of the addressee.

"(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months certain, with such payments con-

tinuing during the remaining lifetime of such beneficiary: *Provided,* That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect, in lieu of this mode of payment and prior to the commencement of payments, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: *Provided further,* That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months: *Provided further,* That in any case in which insurance benefit payments were commenced prior to September 30, 1944, the beneficiary, whether or not the first beneficiary, shall have the right to elect to receive a refund life income, as provided in such optional settlement, payable in monthly installments adjusted as of the date of the maturity of such policy, credit being allowed for payments previously made on the insurance. The right of election with respect to cases in which benefit payments were commenced prior to September 30, 1944, shall terminate two years after the date of enactment of the Insurance Act of 1946. The Adminstrator is directed to send, within one year after the date of enactment of the Insurance Act of 1946, to each beneficiary of insurance on

which payments were commenced prior to September 30, 1944, a notice explaining the right of election. Any such notice shall be sent by registered mail addressed to the last known address of the addressee."

* * * * *

SEC. 9. Section 602 of the National Service Life Insurance Act of 1940, as amended, is hereby amended by adding at the end thereof the following new subsections:

"(t) Insurance maturing on or subsequent to the date of enactment of the Insurance Act of 1946 shall be payable in accordance with the following optional modes of settlement:

"(1) In one sum.

"(2) In equal monthly installments of from thirty-six to two hundred and forty in number, in multiples of twelve.

"(3) In equal monthly installments for one hundred and twenty months certain with such payments continuing during the remaining lifetime of the first beneficiary.

"(4) As a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of the first beneficiary: *Provided,* That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months.

Unless the insured elects some other mode of settlement, the insurance shall be pay-

able to the designated beneficiary or beneficiaries in thirty-six equal monthly installments. The first beneficiary may elect to receive payment under any option which provides for payment over a longer period of time than the option elected by the insured, or if no option be designated by the insured, in excess of thirty-six months. If the option selected requires payment to any one beneficiary of monthly installments of less than $10, the amount payable to such beneficiary shall be paid in such maximum number of monthly installments as are a multiple of twelve as will provide a monthly installment of not less than $10. If the present value of the amount payable at the time any person initially becomes entitled to payment thereof is not sufficient to pay at least twelve monthly installments of not less than $10 each, such amount shall be payable in one sum. Options (3) and (4) shall not be available if any firm, corporation, legal entity (including the estate of the insured), or trustee is beneficiary, or in any case in which an endowment contract matures by reason of the completion of the endowment period.

* * * * *

APPENDIX C—REGULATION INVOLVED

Regulation 3450 of the Veterans' Administration, 6 Fed. Reg. 1162, 1166, 38 C. F. R. (Supp. 1941) 10.3450 provides:

> *Payment to first beneficiary.*—Upon due proof of the death of the insured while a National Service Life Insurance policy is in force, the monthly installments, without interest, which have accrued since the death of the insured (the first installment being due on the date of death of the insured) and the monthly installments which thereafter become payable in accordance with the provisions of the policy, shall be paid to the beneficiary or beneficiaries entitled in the following manner:
>
> (a) If the beneficiary to whom payment is first made is under thirty years of age at the time of the death of the insured, payment shall be made in 240 equal monthly installments at the rate of $5.51 for each $1,000 of such insurance.
>
> (b) If the beneficiary to whom payment is first made is thirty or more years of age at the time of the death of the insured, payment shall be made in equal monthly installments for 120 months certain, with such payment continuing throughout the remaining lifetime of such beneficiary. The amount of the monthly installment for each $1,000 of insurance shall be determined by the age of the beneficiary as of last birthday at the time of the death of the insured, in accordance with the following schedule based upon the American

Experience Table of Mortality and interest at the rate of 3 percentum per annum:

Age of beneficiary at date of death of insured	Amount of each monthly installment	Age of beneficiary at date of death of insured	Amount of each monthly installment
30	$3.97	58	$6.49
31	4.01	59	6.65
32	4.06	60	6.81
33	4.10	61	6.98
34	4.15	62	7.15
35	4.20	63	7.32
36	4.26	64	7.50
37	4.31	65	7.67
38	4.37	66	7.84
39	4.43	67	8.02
40	4.50	68	8.19
41	4.57	69	8.35
42	4.64	70	8.51
43	4.72	71	8.66
44	4.80	72	8.80
45	4.89	73	8.94
46	4.98	74	9.05
47	5.08	75	9.18
48	5.18	76	9.28
49	5.28	77	9.37
50	5.39	78	9.44
51	5.51	79	9.50
52	5.63	80	9.55
53	5.76	81	9.58
54	5.90	82	9.60
55	6.03	83	9.61
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nied on August 7, 1947 (R. 13). The petition for a writ of certiorari was filed on November 6, 1947, and was granted December 8, 1947 (R. 13). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Under Section 602 (h) (2) of the National Service Life Insurance Act of 1940, a beneficiary 30 or more years of age is entitled to be paid in equal monthly installments for 120 months certain, with such payments continuing during the remaining lifetime of the beneficiary. The sole question presented relates to the method for computing the amount of such installments. In particular, the issue is whether the court below erred in invalidating Regulation 3450 issued by the Veterans' Administration, under which the amount of the installment is computed, in accordance with established actuarial principles, by taking into consideration the beneficiary's age and life expectancy at the time of the death of the insured. The court below, accepting respondent's contention, ruled that the statute requires that the amount be computed by dividing the face amount of the policy plus interest by 120, and that the resulting quotient (which is identical in amount in every such case, regardless of the age or life expectancy of the beneficiary) be paid

not only for the 120 months certain but also for the remaining lifetime of the beneficiary.

STATUTES AND REGULATION INVOLVED

The provisions of the National Service Life Insurance Act of 1940 (Part I, Title VI of the Second Revenue Act of 1940, Act of October 8, 1940, c. 757, 54 Stat. 974, 1008, 38 U. S. C. 801 *et seq.*) and the pertinent provisions of the 1944 and 1946 amendments thereto (Act of September 30, 1944, c. 454, 58 Stat. 762; Act of August 1, 1946, c. 728, 60 Stat. 781) are set forth in Appendix B, *infra,* pp. 70–88. Regulation 3450 of the Veterans' Administration, 6 Fed. Reg. 1162, 1166, 38 C. F. R. (Supp. 1941) 10.3450, is set forth in Appendix C, *infra,* pp. 89–90.

STATEMENT

On May 7, 1941, Adolph B. Schwartz, while on active military service, applied for and was granted a $5,000 policy of National Service Life Insurance in which respondent was designated as beneficiary and her relationship to the insured was stated to be that of an "aunt," whereas in fact she was not the insured's aunt. Upon his death in May 1943, the Veterans' Administration refused to pay respondent the benefits of the insurance policy on the ground that she was neither his aunt nor had stood *in loco parentis* to the insured, and hence was not an eligible beneficiary under Section 602 (g) of the National

Service Life Insurance Act of 1940, as it then stood (54 Stat. 1008, 1010, 38 U. S. C. 802 (g)).[1] Respondent accordingly brought suit on August 9, 1944, in the District Court of the United States for the Northern District of Illinois, Eastern Division, in accordance with Section 617 of the National Service Life Insurance Act of 1940 (38 U. S. C. 817, *infra,* p. 83), to recover the insurance benefits as the designated beneficiary of the insured. A trial was had without a jury and the District Court then held that as a matter of law the *in loco parentis* relationship could not have existed and entered judgment against respondent (R. 1–2). On appeal, the Circuit Court of Appeals for the Seventh Circuit held as a matter of law that the relationship could and did exist. Accordingly, it reversed the District Court's judgment and remanded the cause for further proceedings. *Zazove* v. *United States,* 156 F. (2d) 24.

On the remand, the Veterans' Administration offered to pay respondent in accordance with its Regulation 3450 (*infra,* pp. 89–90). That Regulation contained a schedule of monthly installments to be paid under Section 602 (h) (2), *infra,* p. 73, which provided that insurance the beneficiary of which was 30 or more years of age should be paid

[1] Section 4 of the 1946 amendment (60 Stat. 781, 782) revoked the restrictions in the permitted class of beneficiaries in regard to National Service Life Insurance policies maturing thereafter.

"in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary."[2] These payments were calculated in that Regulation on the basis of the beneficiary's life expectancy, as determined from the American Experience Table of Mortality,[3] (which the Veterans' Administration is required to use by

[2] Under this method of payment, the United States is obligated to pay at least 120 equal monthly installments. If the beneficiary lives beyond ten years (the period of guaranteed payments), he is entitled to receive the same monthly installments for his remaining lifetime. If he fails to live ten years, the unpaid guaranteed installments are paid to the next in line, usually the contingent beneficiary.

[3] This table was constructed in the year 1868 from the experience of the Mutual Life Insurance Company of New York during a period of about 20 years. It has four columns, showing for each age on the basis of 100,000 (1) number living, (2) number dying, (3) number dying per 1,000 (Rate of Mortality), and (4) expectation of life. Column (3) is the basic column and is used in making actuarial computations. Column (4) is, as are the other two columns, derived from column (3) and is, generally, merely another way of expressing the same concept. Although not used in modern life insurance computations, the term "expectation of life" is familiar to laymen, and hence we will use it here. For general discussion of the American Experience Table of Mortality, see MacLean, *Life Insurance* (5th ed., 1939), 83–88; Elston, *Sources and Characteristics of the Principal Mortality Tables* (2d ed., 1932), 60–62.

"It is well recognized by actuaries that neither the American Experience Table nor the Combined Experience Table fairly represents the current mortality either of the American population as a whole or of that portion of the population that buys annuities or life insurance. Both are based on obsolete statistical data, and both grossly understate the

Section 602 (e) of the Act (*infra*, p. 72)), plus 3% interest per annum.[4] In the case of respondent herein, who was 54 years of age at the death of the insured, the monthly installments amounted to $29.50, at the rate of $5.90 for each $1,000 of insurance. Respondent, however, claimed that Regulation 3450 was void and unauthorized. She contended that under Section 602 (h) (2) the full face amount of the policy plus 3% interest per annum was to be paid in 120 equal monthly installments, *i. e.* $9.616 per month for each $1,000 of insurance ($48.08 for the $5,000 policy of which respondent was the beneficiary), and that she was

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life expectancy of young people. Their use today in life insurance is predicated on the fact that these tables, although not representative of current mortality, provide a conservative measure of an insurance company's liability under life-insurance policies." 2 Bonbright, *Valuation of Property* (1937), p. 741. Since the compilation of the American Experience Table the expectancy of life has lengthened materially; accordingly, premiums set on the basis of that table are conservative, but that is in some measure offset by the fact that benefits are also payable on that basis and hence err on the side of liberality. For this reason, the actual liabilities which the court below imposed on the National Service Life Insurance system, as shown in the letter from the Veterans' Administration, Appendix A, are heavier than they would be if the American Experience Table were an accurate reflection of current mortalities. However, for simplicity and because of the statutory mandate, our argument is couched in terms of that table.

[4] In calculating the monthly payments, the two primary factors for consideration are the beneficiary's life expectancy and the fact that payments are guaranteed for ten years. The mathematics determining the monthly payments under Regulation 3450 is described in Appendix D, *infra*, p. 91.

entitled to such monthly payments for her remaining lifetime.

The District Court rejected respondent's contention and held that she was entitled to monthly payments, according to the Regulation, in the amount of $29.50 per month since May 12, 1943, for 120 months certain, which payments were to continue for the remainder of her natural life (R. 5). It also ordered the United States to pay respondent the unpaid installments which had already accrued (R. 5–6).

On appeal, the court below reversed the judgment of the District Court and remanded the cause for further proceedings, on the ground that Regulation 3450 did not comply with Section 602 (h) (2) of the National Service Life Insurance Act of 1940. It held that that Section required the amount of the monthly installments, to be paid to beneficiaries 30 or more years of age at the time of the death of the insured, to be computed by dividing the face amount of the policy (plus 3% interest per annum) by 120, without regard to the beneficiary's expectation of life at the insured's death (R. 9), and this despite the fact that the payments were to continue for the remainder of the beneficiary's life; that since the total of the 120 *guaranteed* payments, as computed by the Veterans' Administration, was not equal to the face amount of the policy plus interest, the insured's beneficiary did not receive what the insured had contracted for (R. 8–9); that Congress,

in its amendment of September 30, 1944, did not approve the construction of Section 602 (h) (2) contained in Regulation 3450 (R. 9–10); and that although these payments might in extreme cases require the Government to pay five times the face amount of the policy, Congress, in its generosity to the beneficiaries of veterans, might have intended such a result (R. 9–11). Judge Kerner dissented (R. 11).

While this case was pending in the District Court for the first time, the Act of September 30, 1944, c. 454, 58 Stat. 762, 763, authorized the granting of an option to all beneficiaries, except those to whom payments of insurance installments had already been commenced, to elect to receive a refund life income in place of payments under the original provisions of Section 602 (h) (2);[5] and

[5] Under the refund life income option, the first beneficiary's life expectancy is taken into account and a series of guaranteed monthly instalment payments is established in an amount and for a sufficient period so that the sum of these guaranteed installments, although equal to substantially less than the present value of the policy, equals its face amount. This difference between the face amount of the policy and the present value of the guaranteed payments is the result of the fact that only the face amount, and not interest, is guaranteed. The value of *all* installments, both guaranteed and contingent, discounted at 3%, is, however, equal to the present value of the policy. See *infra*, pp. 58–59. If the first beneficiary lives beyond the guaranteed period, the installments continue for the remaining lifetime of that beneficiary, but second or contingent beneficiaries receive payments only for the guaranteed period. The amount of each installment is, in most cases, lower than it would be under Regulation 3450, since the guaranteed period is longer. See *supra*, p. 5.

the Administrator did grant such an option. After the case had been returned to the District Court for its second hearing, the Insurance Act of 1946 (Act of August 1, 1946, c. 728, 60 Stat. 781) extended this option to cases in which insurance benefit payments had been commenced prior to September 30, 1944. Under this option, respondent would be entitled to receive monthly installments of $27.40 (at the rate of $5.48 for each $1,000 of insurance) for a guaranteed period of 183 months, and thereafter for her remaining lifetime. Respondent has not elected to receive payments under this plan, nor has she received any payments under the original statutory method of settlement, either as calculated by the Veterans' Administration or by herself.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that Regulation 3450 set up a formula different from the one prescribed by Section 602 (h) (2) of the National Service Life Insurance Act of 1940.

2. In holding that Section 602 (h) (2) plainly and unambiguously required that the face value of the insurance plus 3% interest per annum was to be paid in equal monthly installments over a period of 120 months certain.

3. In holding that under Regulation 3450 the beneficiary who died before the expiration of 120 months did not receive what the insured had bargained for.

4. In holding that "nothing is said in the statute about equalizing" the face value of the policy plus interest over the life expectancy of the beneficiary.

5. In failing to hold that Congress by the 1944 amendment to the Act approved Regulation 3450.

6. In reversing the judgment of the district court.

SUMMARY OF ARGUMENT

A. The bare text of Section 602 (h) (2), read without extrinsic aid, supports the construction, embodied in Regulation 3450, that the beneficiary's life expectancy must be taken into account in the calculation of benefit payments. Paragraph (2) of the Section parallels paragraph (1) in first designating the class of beneficiaries it covers, and then describing the period of time over which "such insurance" is to be payable in equal monthly installments. On this view, the words "one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary" represent the period of time over which the face amount of the insurance is to be paid, "in equal monthly installments," in the case of beneficiaries of thirty or more. This reading best harmonizes the parallel wording of paragraphs (1) and (2) and best relates paragraph (2) to the opening language of Section 602 (h).

Moreover, since the Act is comprehensive insurance legislation, employing recognized insurance

terms throughout, Section 602 (h) (2) should be construed in its technical sense as incorporating the beneficiary's life expectancy as an element in the computation of the amount of the monthly installments. This type of insurance settlement has long been used by commercial life insurance companies; their uniform construction and practice is in accord with Regulation 3450, since the inclusion of the beneficiary's life expectancy in computing monthly installments is required by fundamental actuarial principles. If the proceeds of matured insurance contracts are to be paid in monthly installments for life to beneficiaries of different ages, and hence with different life expectancies, the amount of the monthly installments must vary inversely. A commercial company will, by the averaging process basic to calculating life expectancies, pay no more than the total of the face amounts of its policies plus interest. To ignore life expectancy in settlements providing a life-annuity-with-guaranteed-minimum-period would result in paying at least full face amount plus interest in each case, and since beneficiaries will usually live beyond the minimum guaranteed period, more than the face amount plus interest in most cases. In these circumstances, a commercial insurance company would ultimately have to default on its obligations.

There is neither injustice nor irregularity involved in computing monthly installments on the

basis of the beneficiary's life expectancy since the present value of the monthly installments established by Regulation 3450, viewed prospectively at the time of the insured's death, is equal to the face amount of the policy, regardless of when the beneficiary himself thereafter dies. On the other hand, the ruling below increases the present value of insurance payable to beneficiaries 30 or more years old to between one-and-one-half and two-and-one-half times the face amount, and thus leads to unaccountable discrimination against beneficiaries under 30, the present value of whose benefits remains equal to the face amount. And, even if premiums could be increased to discharge the increased liability, which increase would probably be impossible of accurate calculation so long as the insured is given the right to change his beneficiary, the consequence would be to burden insureds, whose beneficiaries are under 30, with the increased installments payable to beneficiaries over 30.

B. Provisions of the original Act, other than Section 602 (h) (2), make it clear that consideration of the beneficiary's life expectancy is required in calculating the schedule of monthly installments payable under that Section. As so calculated, the monthly installments due to beneficiaries 30 years or more fulfill the statutory requirements that all insurance calculations be based on the American Experience Table of Mortality (Section 602 (e)); that the premium rates

be the well-known "net rates" (Section 602 (e)), which are adequate to discharge all liabilities under the Regulation but not under the decision below; that the actual value of the policy at the time of the death of the insured, under the American Experience Table, not exceed $10,000 (Sections 602 (q), 603); that reserves adequate to meet all liabilities be set aside under accepted actuarial principles (Section 605 (b)), and that the actual value of the policy on maturity be not influenced by the accident of whether the beneficiary was more or less than 30.

The decision below is not only inconsistent with these statutory provisions but its sole rationalization, i. e., that Congress intended to assume the extra costs, conflicts with further sections marking out the express limits of Congressional generosity, which include no assumption, or provision for the payment, of the great additional liabilities under Section 602 (h) (2) as construed below. Moreover, the lower court ignores the facts that no such generosity was shown to World War I veterans and that Congress clearly intended to be no more liberal to the servicemen covered by the National Service Life Insurance Act of 1940. Finally, it imposes enormous liabilities on the United States without the clear language necessary to warrant a court in holding that Congress intended to assume them.

C. Construed in light of the practice under the pre-existing United States Government Life

Insurance system (available to World War I veterans), Regulation 3450 is valid. A similar option (life annuity with 240, instead of 120, guaranteed monthly installments) was by regulation provided under that system, and the monthly installment payable under that option was based on the life expectancy of the beneficiary. It is far more reasonable to construe 602 (h) (2) as continuing, with some modification, this settlement practice under the earlier act than to read it as a drastic and unheralded departure from all known governmental or private insurance practice.

D. The construction of Section 602 (h). (2) embodied in Regulation 3450 was adopted shortly after the Act became law. It was early communicated to the various service departments and military installations for transmission to eligible servicemen, and its substance was incorporated in various of the forms used in selling National Service Life Insurance. Moreover, the Veterans' Administration has consistently, since 1940, followed this construction and on its basis has settled, without any other complaint, matured claims totalling more than two billions of dollars. In these circumstances this administrative interpretation is entitled to great weight, particularly where, as here, the Regulation incorporates a contemporaneous construction by the agency which participated in the drafting of the Act and was charged with its administration. Since

there is, at the very least, a plainly reasonable basis for this construction, it was error to upset this hitherto unchallenged regulation.

E. The legislative history, as well as the terms, of the 1944 and 1946 amendments to the benefit-payment provisions of the Act, also support the Regulation's validity.

1. The Veterans' Administration's letter accompanying the 1944 proposal reproduces the schedule of installments under the Regulation, points up the fact that the total guaranteed installments are less than face amount of the policy and that hardship might arise in cases of premature death, and recommends the addition of a refund life income option, the total guaranteed payments of which equal the face amount. Congress was thus told in plainest terms of the construction placed by the Veterans' Administration on Section 602 (h) (2). Moreover, the addition of the refund life income option indicates affirmative approval of that construction, for the additional option was made available for the express purpose of mitigating hardship which resulted in some cases under 602 (h) (2), as originally enacted. But such hardships would result only under the construction placed thereon by the Veterans' Administration. Under the construction below, the full face amount of the policy *plus* interest is guaranteed in each instance. This guaranteed amount is substantially greater than the amount guaranteed under the option

added in 1944, *i. e.*, the full amount of the policy *without* interest. Hence if the construction below were intended originally, there would have been no necessity to make the additional option available.

2. Under the 1946 amendment, it was expressly stated, this time by the House Committee on World War Veterans' Legislation, that the aggregate amount guaranteed under 602 (h) (2), as originally enacted, was less than the face amount of the policy. Thus, again, the construction embodied in Regulation 3450 was recognized, and again to mitigate some hardship, the right to elect a refund life income was continued. Approval of Regulation 3450 is further manifest from the Congressional addition of a new Section 602 (t) providing, as one of four optional methods of settlement for all policies thereafter maturing, an option identical with that of Section 602 (h) (2), (option (3)), which option, however, was not made available to firms, corporations, etc., "because payments in such cases could not be based upon the life of an individual." Option (3) can be fitted into the Act's structure only if the Veterans' Administration's construction be adopted. For instance, Congress, as part of option (2), included the right to receive the insurance benefits in 120 guaranteed payments and no more. Under the construction below, the same monthly payments would be made both under that option and under option (3), although, in the latter case only, for some unaccountable

reason, the monthly installments would continue after the termination of the guaranteed period for the beneficiary's remaining lifetime. If such differential results were intended, it was unnecessary to add the other options, since option (3) would be selected in the vast majority of cases, because of its disproportionate value compared to the premiums paid and to the other options.

ARGUMENT

VETERANS' ADMINISTRATION REGULATION 3450 IS VALID AND CONSISTENT WITH SECTION 602 (H) (2) OF THE NATIONAL SERVICE LIFE INSURANCE ACT OF 1940

The court below, in a decision of unprecedented importance in the field of veterans' insurance, has held that Regulation 3450 of the Veterans' Administration contravenes Section 602 (h) (2) of the National Service Life Insurance Act of 1940, and has in effect construed that Section as "plainly and unambiguously" imposing actual liabilities totally disproportionate to the premiums paid and beyond the ability of the National Service Life Insurance Fund ultimately to discharge. This holding ignores the plain meaning of the statutory method of settlement as understood in the field of commercial life insurance; violates fundamental actuarial principles; is inconsistent with other sections of the National Service Life Insurance Act of 1940; and disregards the consistent administrative construction

by the Veterans' Administration of Section 602 (h) (2), which Congress in considering subsequent amendments to the Act indicated was in accord with its intention. By its violation of fundamental and universally accepted actuarial principles, and its misreading of the statute, the decision below increases the potential liabilities to be satisfied out of the National Service Life Insurance Fund by tens of billions of dollars in excess of the premiums paid in and to be paid.* We submit that in so holding the Circuit Court of Appeals committed clear error.

A. REGULATION 3450, UNLIKE THE DECISION OF THE COURT BELOW, IS INCONSISTENT WITH THE TERMS OF SECTION 602 (h), THE STATUTORY METHOD OF SETTLEMENT AS UNDERSTOOD IN THE INSURANCE FIELD, AND WITH RECOGNIZED FUNDAMENTAL ACTUARIAL PRINCIPLES

1. Regulation 3450 was intended to embody the method of settlement established in Section 602 (h) (2) and its validity hinges upon the construction given to that Section. The statute provides:

> *Such insurance* shall be payable in the following manner:
>
> (1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly instalments.
>
> (2) If the beneficiary to whom payment is first made is thirty or more years of age

* See letter of the Administrator of the Veterans' Administration of October 24, 1947, Appendix A, *infra*, pp. 66–69.

> at the time of maturity, in equal monthly instalments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary. [Italics supplied.]

As a matter of bare text, paragraph (2) certainly permits of the construction that the "insurance" (presumably the face amount of the policy—here $5,000—upon which premium payments were based) was to be payable in equal monthly installments for the beneficiary's entire lifetime, with a guarantee of payments for 120 months certain. This is the construction embodied in Regulation 3450. That regulation provides that, in cases in which the beneficiary is 30 or more, "the amount of the monthly installment for each $1,000 of insurance shall be determined by the age of the beneficiary as of last birthday at the time of the death of the insured," in accordance with a schedule, "based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum," which shows that a beneficiary aged 54 at the insured's death, respondent's age, is entitled to receive monthly installments of $5.90 for each $1,000 of insurance.[7]

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[7] Section 608 of the National Service Life Insurance Act of 1940, 54 Stat. 1012, 38 U. S. C. 808, gives the Administrator of the Veterans' Administration "power to make such rules and regulations, not inconsistent with the provisions of this part [i. e. the National Service Life Insurance Act], as are necessary or appropriate to carry out its purposes * * *."

No actual National Service Life Insurance *policy* was is-

The Circuit Court of Appeals and respondent insist, however, that another construction of paragraph (2) is demanded by the statute's wording. Under their construction, the full face amount of the "insurance," together with interest, is payable in equal monthly installments for 120 months, *i. e.*, ten years; after the $5,000 of "insurance" has been so paid, additional monthly installments of like amount are to be paid to the beneficiary for his remaining lifetime.

But, far from being "plain and unambiguous," the latter construction, in addition to leading to unreasonable and illogical results at war with the entire structure and purpose of the Act, as we shall show, constitutes, in and of itself, a forced construction of the text of Section 602 (h) (2). In the first place, Section 602 (h) provides at the outset that "Such insurance shall be payable" in a designated manner. The term "such insurance" patently refers to the *insurance* for which

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sued. The National Service Life Insurance Certificate, which was issued in each case in lieu of the policy, as authorized in Section 602 (a), 38 U. S. C. 802 (o) (Appendix B, *infra*, p. 76), provided:

"Subject to the payment of the premiums required, this insurance is granted under the authority of the National Service Life Insurance Act of 1940, and subject in all respects to the provisions of such Act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of this Act, shall constitute the contract."

Cf. *Lynch* v. *United States*, 292 U. S. 571, 577; *White* v. *United States*, 270 U. S. 175, 180.

the insured contracted, and not to gratuitous benefits in excess of the amount of insurance contracted for. Moreover, the terms of paragraphs (1) and (2)—both of which are preceded by, and dependent grammatically upon, the single clause, "Such insurance shall be payable"— are parallel in structure, indicating clearly that the benefits available under each plan are to be the same; each paragraph contains, first, a designation of the class of beneficiaries to which it applies, and, secondly, a description of the period for which the benefit installments flowing from the "insurance" are to be paid. In other words, the language of paragraph (1) preceding the comma (*i. e.*, "If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity") parallels the initial words of paragraph (2) (*i. e.*, "If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity"). The remaining language of Section 602 (h) (1) (*i. e.*, "Such insurance shall be payable * * * in two hundred and forty equal monthly installments"), likewise parallels the language of paragraph (2) following the first comma (*i. e.*, "Such insurance shall be payable * * * in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary"), and each of these provisions defines the period of payment of the "insurance" to the class of beneficiaries to which it applies. This is made even

clearer by the difference in wording of the latter portions of the two paragraphs; paragraph (1) makes the insurance payable flatly "in two hundred and forty equal monthly installments," while paragraph (2) makes it payable "in equal monthly installments for * * *," and then follows the period of payment; *i. e.*, "one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary."[8] If there were no second comma in paragraph (2), or if it followed the word "installments," this parallelism of the two paragraphs would be entirely clear, but the placing of the punctuation mark does not conceal the function of the portions of both paragraphs which follow the first comma as designating the period of time over which the "insurance" was to be paid in equal monthly installments.

If the lower court's construction of paragraph (2), differentiating so sharply in treatment of beneficiaries under 30 from the older ones, were intended by Congress, it is probable that this parallelism would have been displaced by a different structure, in which the "in two hundred and forty equal monthly installments" of para-

[8] Note also the use of the terms "for one hundred and twenty months *certain*." This language carries a well-known meaning in the insurance field (*infra*, pp. 25–26), but even in ordinary usage it would connote, in the context of paragraph (2), that the insurance was to be payable in equal monthly installments throughout the beneficiary's lifetime, but that 120 payments were guaranteed in any event.

graph (1) would be matched by "in one hundred and twenty equal monthly installments," in paragraph (2), and the additional contingent benefit to the older beneficiaries expressed in a separate sentence. On the wording of Section 602 (h), as Congress wrote it, the construction of paragraph (2) embodied in Regulation 3450 is textually the preferable one, simply as a matter of grammatical structure and of the language employed.

2. Even if the langage of Section 602 (h) (2) might not clearly connote to a layman that the beneficiary's life expectancy must be considered in computing the amount of the monthly installments, it would be universally interpreted as having that meaning in commercial life insurance. The National Service Life Insurance Act is comprehensive insurance legislation, employing recognized insurance terms throughout,[9] and it is in that technical sense that these statutory provisions must be understood and interpreted,

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[9] For example, in Section 602 (h) (2) itself, we find "one hundred and twenty months certain" and "at the time of maturity", terms which have a definite technical meaning in the insurance field. Other examples are as follows: Section 602 (a), 38 U. S. C. 802 (a) refers to the "five-year level premium term plan;" Section 602 (e), 38 U. S. C. 802 (e) to premium rates" and "cash, loan, paid up, and extended values;" Section 602 (f), 38 U. S. C. 802 (f) to the "privilege of conversion," "payment of the difference in reserve," "policies of insurance upon the following plans: Ordinary life, twenty payment life, thirty payment life," "dividends from gains and savings," "refunds of unearned premiums;" Section 605 (b), 38 U. S. C. 805 (b), to "such reserve amounts as may be required under accepted actuarial principles;" Section 607 (a), 38 U. S. C. 807 (a), to "excess mortality cost."

unless Congress has clearly indicated another purpose. *Massachusetts Protective Ass'n* v. *United States*, 114 F. (2d), 304, 311 (C. C. A. 1); *Portland Terminal Co.* v. *Boston and Maine Railroad*, 127 Me. 428, 436; *State* v. *Murlin*, 137 Mo. 297, 305–306; *State ex rel. Cantwell Printing Co.* v. *Hull*, 170 Wis. 174, 177–178; 2 Sutherland, *Statutory Construction*, 3rd ed. (1943), sec. 4919, p. 437. In this field, the practice of commercial insurance companies and established actuarial principles are essential sources of meaning. It is important to recognize, at the outset, that this was not a statute addressed to laymen, couched in common every-day terms which all could understand. This was a technical statute, dealing with a technical subject and employing technical concepts and expressions unfamiliar and therefore of uncertain meaning to the average man but wholly clear and precise to the technician in whose language it was written.[10]

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[10] See Frankfurter, *Some Reflections on the Reading of Statutes*", the Benjamin N. Cardozo Lecture before the Association of the Bar of the City of New York, March 18, 1947, published in 47 Col. L. Rev. 527, 536:

"We must, no doubt, accord the words the sense in which Congress used them. That is only another way of stating the central problem of decoding the symbols. It will help to determine for whom they were meant. Statutes are not archaeological documents to be studied in a library. They are written to guide the actions of men. As Mr. Justice Holmes remarked upon some Indian legislation, 'The word was addressed to the Indian mind.' [*Fleming* v. *McCurtain*, 215 U. S. 56, 60.] If a statute is written for ordinary folk,

a. Commercial life insurance companies, in computing the amount of the monthly installment under this general type of settlement of matured insurance contracts (*i. e.*, life annuity to beneficiary with guaranteed minimum number of payments), a settlement which is commonly offered and well understood, have uniformly considered the beneficiary's life expectancy, without question either by the courts or state insurance commissioners."[11] This method of settlement had long been in commercial use in 1940, the year in which the National Service Life Insurance Act became law. See, *e. g.*, Huebner, *Life Insurance* (3d ed. 1935), pp. 174–5; and *The Handy Guide to Standard and Special Contracts* (1940)—setting forth specimen commercial policies containing terms and tables used in calculating benefit payments to beneficiaries of various ages, pp. 294–296 (Equitable Life Assur. Society), 613, 614 (Metropolitan Life Ins. Co.), 766, 768 (New York Life Ins. Co.), 816 (Northwestern Mutual Life Ins. Co.), 1005 (Prudential Ins. Co. of America). Use of this method has continued down to the present time. *The Handy Guide to Standard and Special Contracts* (1947), pp. 270–271, 273 (Equitable), 567, 568 (Metropolitan), 672, 673 (New York), 705,

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it would be simply arbitrary not to assume that Congress intended its words to be read with the minds of ordinary men. If they are addressed to specialists, they must be read by judges with the minds of the specialists."

[11] See *infra*, pp. 30–31, fn. 16.

707 (Northwestern), 843 (Prudential)." Under this type of settlement, commercial companies do not pay out the full face amount plus interest of the policy within the guaranteed period and thereafter continue regular installments for the rest of the beneficiary's life, as respondent would require the Veterans' Administration to do under the similar terms of Section 602 (h) (2). Rather, the commercial practice is in accord with the procedure under Regulation 3450. See tables cited in *The Handy Guide* and Huebner, *supra*.

b. The inclusion of the beneficiary's life expectancy in the computation of the monthly installments is required by fundamental actuarial principles. A commercial insurance company, in obligating itself to pay, on the death of the insured, the face amount of the matured policy (with

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[12] The language of Section 602 (h) (2) is substantially the same as that of the similar options of the commercial insurance companies:

E. g., Equitable's option reads: "LIFE INCOME OPTION—Made payable in equal * * * monthly instalments for ten or twenty years certain, with payment continuing during the remaining lifetime of the person upon whose life the income depends * * *."

Metropolitan's option reads: "(LIFE INCOME—10 YEARS CERTAIN).—By the payment of equal monthly payments * * * to the * * * beneficiary, * * * for a fixed period of 10 years and for so long thereafter as the payee shall survive, * * *."

New York's option reads: "LIFE INCOME WITH PAYMENTS GUARANTEED FOR A FIXED PERIOD:—The proceeds * * * may be made payable in equal * * * monthly instalments for a fixed period of ten or twenty years, * * * and for the remaining lifetime of the payee, * * *."

interest) in monthly installments, *must* consider the life expectancy of the beneficiary. The life expectancy of a young person is naturally greater than that of an older person; so that, if the proceeds of the insurance are to suffice to provide life income payments to beneficiaries at various ages, the amount of each installment must be greater for a person with a short life expectancy than for one with a longer life expectancy. Although it is unpredictable how long a particular individual will live, the life expectancy of a large group of persons of the same age is calculable. The amount of the monthly installment is based upon the life expectancy of this group, and the company, by an averaging process, is assured that it will not be called upon to pay more than the total of the face amounts of its policies plus interest, since the losses sustained when one beneficiary lives beyond his life expectancy will be offset by the gains made when another dies prematurely.

If the beneficiary's age and life expectancy are ignored, as the court below held was required by Section 602 (h) (2), and only the guaranteed minimum period is considered in computing the monthly installments, then payments equaling the full face amount of the policy, plus interest, will be the minimum paid in each instance, as a matter of course. In most cases, however, the guaranteed period (ten years) is below the beneficiary's life expectancy, and the beneficiaries will live beyond

that minimum period.[13] Hence, more than the face amount of the policy, plus interest, will necessarily have to be paid in most cases. But in this situation there is no gain to draw on to offset the additional liabilities, since at least the face amount of the policy plus 3% interest would always be paid out. A commercial insurance company, faced with such a construction of this type of settlement, would ultimately be forced to draw upon reserves held for other liabilities or default in its payments. A theoretical, although not practical,[14] alternative might be to raise its premiums to such high levels that it would always be protected no matter what the beneficiary's life span; but in that case the cost of insurance for many insureds (*e. g.*, those with older potential beneficiaries) would be disproportionately high to the benefits to be received upon their death; they would in effect be paying for benefits which they could not obtain and which accrued to other insureds who had chosen beneficiaries with longer life expectancies. See *infra*, pp. 32–35.

Contrary to the court below, there is neither injustice nor irregularity involved in computing

[13] Under the American Experience Table, a person has to be 68 years old before his life expectancy is less than ten years.

[14] This alternative is hardly practical so long as the insured retains the right to change his beneficiary, and is free at any time to designate a child with the maximum life expectancy. Beneficiaries often die before insureds, and the right to change beneficiaries would therefore always have to be retained, at least in some measure.

the monthly installments according to the beneficiary's age, even though some beneficiaries, who "die before their time," ultimately receive less than the full face amount of the policy plus interest. The situation must be viewed prospectively at the time of the insured's death. On that date, the insurance contract matures, and the beneficiary is entitled to the face value of the policy, $10,000 or, as in this case, $5,000. Under the type of settlement represented by Section 602 (h) (2), as construed in Regulation 3450, the payment is in effect made by the automatic purchase for the beneficiary of a life annuity with 120 payments guaranteed; and at that time, the present value to the beneficiary of this annuity, computed in accordance with the American Experience Table and 3% interest, equals the face amount of the policy. See *infra,* p. 32 and Appendix D, *infra,* p. 93. In these circumstances, at the time of the insured's death the beneficiary becomes entitled to benefits representing the face amount of the contract purchased for him by the insured. Regardless of when the beneficiary dies, be it the next day, 10, 20, or 50 years thereafter, the complete obligation under the annuity is discharged so long as the first beneficiary receives monthly installments throughout his lifetime, and if the next in line receives the balance in the event that the first beneficiary dies prior to receiving the full number of guaranteed installments. Less or more than the

policy's face amount plus interest may ultimately be paid out, depending upon the actual length of the first beneficiary's life,[15] but looking forward from the time of maturity the real value of the policy accords with its face amount.[16] A prin-

[15] If the beneficiary outlived his life expectancy in any substantial degree, the payments under the policy would considerably exceed the face amount plus interest. That the beneficiary may ultimately receive less—or more—than the policy's face amount is, of course, not unique in the insurance field. Commercial insurance companies, as we have said (*supra*, pp. 25–26), offer life-annuity-with-guaranteed-payment settlements which are interpreted in the same way as Regulation 3450. And commercial insurance companies regularly sell straight life annuity contracts in which less than the amount paid by the insured on the contract plus interest is returned if the annuitant dies prematurely. By contrast, a beneficiary is entitled to the full face amount of the policy even though his insured dies after payment of only one premium. An example, in another field, of the valuation of interests at the time of the death of the person providing the benefit—*i. e.*, at the beginning of the beneficiary's period of enjoyment—is the valuation, for tax purposes, of life interests and remainders as of the date of the death of the testator, even though the life tenant may actually die very prematurely. *Ithaca Trust Co.* v. *United States*, 279 U. S. 151, 155; *Matter of White*, 208 N. Y. 64.

The method of settlement represented by Regulation 3450 was deemed so useful and equitable that early in 1944 it was added, by regulation of the Veterans' Administration, as a fourth optional settlement under United States Government Life Insurance—established in 1919 for World War I veterans—in addition to the three options which had been available for several years. 9 Fed. Reg. 732, January 19, 1944. See *infra*, p. 46.

[16] Commercial life-insurance policies providing settlements similar to that of Regulation 3450 have never been held to conflict with the statutory provisions in some sixteen states,

ciple of actuarial equivalence—*i. e.*, equivalence between the present value of the monthly installments under the policy and the policy's face amount—is basic to all insurance calculations, and is rigidly observed in commercial insurance practice. This requirement of equivalence is observed not only in installment settlements but in premium and other insurance calculations.

3. The ruling below flatly violates these fundamental principles and leads to unaccountable discrimination and extraordinary results. First, in violation of the principle of actuarial equivalence stated above, the Circuit Court of Appeals' view gives the beneficiary far more than the $10,000 or the $5,000 his insured had contracted for, since if the monthly installments are calculated on the basis of the 120 guaranteed payments, without regard to the beneficiary's life expectancy, then the actual value of the policy at the death of the insured is considerably in excess of the policy's face amount. Calculated on the basis of the American Experience Table of Mortality, rather than on the Veterans' Administration's

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the District of Columbia, and Hawaii, prohibiting "any provision for a mode of settlement at maturity of less value than the amount insured on the face of the policy, plus dividend additions, if any, less the indebtedness to the company on the policy, and less any premiums that may by the terms of the policy be deducted." Penn. Stats. Ann. (Purdon's ed.), Title 40, Sec. 511 (d) (from Pa. Laws, 1921, p. 724); for similar provisions, see, *e. g.*, Okla. Stats. Ann., Title 36, Sec. 219 (from Okla. Laws, 1909, p. 346); Mich. Stats. Ann., Title 24, Sec. 24.263 (4) (from Mich. Pub. Acts, 1943, p. 103).

own experience,[17] the comparative present values of the monthly installments under Regulation 3450 and under the respondent's contention are as follows:[18]

Beneficiary's age	Present value under Regulation 3450	Present value under respondent's view	Beneficiary's age	Present value under Regulation 3450	Present value under respondent's view
10	$1,000	[1] $2,796	50	$1,000	$1,796
20	1,000	2,633	54	1,000	1,629
30	1,000	2,421	60	1,000	1,411
40	1,000	2,136	70	1,000	1,129

[1] Under the 1946 amendment (*infra*, pp. 87–88), all beneficiaries, regardless of age, are eligible for the life-annuity-with-120-guaranteed-payments settlement formerly restricted by Section 602 (h) (2) to beneficiaries of 30 or more. See *infra*, pp. 60–64.

The striking disparity between the benefits available under the original act to beneficiaries under 30 and those accruing, under the lower court's construction, to older beneficiaries is also indicative of the error in the ruling under review. Section 602 (h) (1), dealing with the method of settlement to beneficiaries under 30 years of age at the time of the insured's death, provides

[17] Calculation of present values on the lower court's view which are based on the *actual* mortality of National Service Life Insurance beneficiaries (see the figures set out in Appendix A, *infra*, p. 67) enlarges the difference between present values according to Regulation 3450, and those under the Circuit Court of Appeals' interpretation of Section 602 (h) (2), since the present values under the Regulation are calculated under the American Experience Table, which understates present-day expectancies (*supra*, pp. 5–6, fn. 3). This difference in basis of calculation still leaves, however, a large gap between the two sets of values, as the figures in the text and those in Appendix D indicate. Moreover, the calculations based on actual mortality figures more nearly reflect the true potential liability resulting from the decision below.

[18] The construction of this table is explained in Appendix D, *infra*, pp. 91–93.

for 240 payments and no more. There is no room for any construction of that provision so that these younger beneficiaries would receive more than the face of the policy plus interest. As above, accepted actuarial principles can be applied to determine the present value of both settlements. Under Regulation 3450, their value would be substantially the same for both classes of beneficiaries. Under the construction below, while the actual value of a policy to a beneficiary 29 years old still equals the face amount, the actual value of the policy to a beneficiary 30 years old would be almost 2½ times the face amount.

If, moreover, as Congress has indicated in the Act, the National Service Life Insurance Fund was to be self-supporting in all respects, except for the items specifically enumerated (see *infra*, pp. 40–45) the Veterans' Administration in establishing premium rates should have allowed for these additional payments to beneficiaries of 30 or more years of age. The premiums as now set are adequate to meet liabilities equal to the face amount of the policy but not these large additional burdens. But apart from the fact that the Veterans' Administration clearly could not under the Act establish premium rates at a different level (see, *infra*, pp. 36–37),[19] it would be impossible to

[19] Congress did not intend the premium rates to be substantially higher than the rates established. In reporting the original measure to the Senate, Senator Harrison stated flatly that "premium rates based on the average age—25 years—will be 67 cents per thousand per month." 86 Cong. Rec. 12926. See also *infra*, pp. 36–37.

establish rates at reasonable levels which would accurately reflect such increased liabilities, so long as the insured is allowed to change his beneficiary at will. The only rates which could be set would be those which would protect the Fund against all contingencies, which rates would be at prohibitive levels. Moreover, any increase in premiums would result in the insured whose beneficiary was under 30 making contributions to offset the additional payments to beneficiaries 30 or over. Hence, even if the rates could be increased to levels necessary to protect the Fund, they would be disproportionately high compared to the benefits in many cases, and grossly discriminatory against insureds with beneficiaries under 30. See *supra*, p. 28; *infra*, pp. 36–37.

To illustrate the discrimination against beneficiaries under 30 years of age, and the other inequities of the respondent's construction of the Act, let us take the case of three servicemen, each carrying $10,000, all in the same age group, and accordingly paying the same premiums. One names his 10-year-old son as beneficiary; the second names his 30-year-old sister; and the third his 70-year-old mother. If each should die shortly thereafter, the son would, under respondent's construction, receive an income of $55.10 a month for 20 years; the sister would receive $96.10 a month for 10 years, and for as long thereafter as she might live; and the mother would receive the same monthly payments as the sister, even though the

mother has a life expectancy of 8.48 years, while that of the sister is 35.33 years, according to the American Experience Table. As of the date of the insured's death, the present value of the mother's total income would be $11,294.79 (under the American Experience Table and calculated on the basis of 3% interest), while that of the sister would be $24,206.55; the boy's, with no mortality element involved, would, of course, be $10,000. It is difficult to attribute to Congress the inequity of allowing the beneficiaries of three insureds of equal age, paying identical premiums, benefits of such vastly different value. Regulation 3450, consistent with recognized acturial principles and accepted practice, avoids such irrational discrimination.

B. OTHER PROVISIONS OF THE ACT INDICATE THAT THE BENEFICIARY'S LIFE EXPECTANCY SHOULD BE CONSIDERED IN CALCULATING PAYMENTS UNDER SECTION 602 (h) (2)

Provisions of the original Act, other than Section 602 (h) (2), make it clear that the Veterans' Administration was required, in calculating the schedule of monthly installments payable under Section 602 (h) (2), to consider the beneficiary's life expectancy.

1. Section 602 (e) (Appendix B, *infra*, p. 72) provides that in addition to all premiums, "all cash, loan, paid up, and extended values, *and all other calculations in connection with such insurance,* shall be based upon said American Experience Table of Mortality * * *." [Italics sup-

plied.] The all-inclusive nature of this language plainly encompasses the calculations of monthly installments due to beneficiaries over 30 years of age, and required the Veterans Administration to base these schedules upon the American Experience Table.

2. Section 602 (e) also requires that "the premium rates for such insurance shall be the *net rates* based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum." [Italics added.] [20] We have pointed out above (a) that Senator Harrison, in charge of the bill, informed the Senate that premium rates for a 25-year-old serviceman would be 67 cents per thousand, and (b) that this rate is adequate to cover payments under Regulation 3450 but wholly inadequate under the construction we attack (see *supra*, pp. 31–34). Moreover, the rates set—those mentioned by Senator Harrison—were the only rates which could under this Section be established, since the term "net rates" has a definitive actuarial meaning as rates which, without loading for expenses of administration, for additional benefits of any kind, or for extra reserves against unexpected

[20] These words are virtually identical with those of Section 403 of the Act of October 6, 1917, c. 105, 40 Stat. 398, 410 (establishing yearly renewable war risk insurance) and of Section 301 of Title III of the World War Veterans' Act, 1924, c. 320, 43 Stat. 607, 624 (concerning converted United States Government Life Insurance), except for the change of the interest rate from 3½% to 3%. See *infra*, p. 37, fn. 22.

liabilities, should be established as premiums for pure life insurance of a particular face amount; and the specific "net rates" for any particular method of premium payment, monthly or yearly, at various rates of interest, may be found in standard tables which are commonly used in the field of insurance.[21] For this reason, it is clear that the reference in Section 602 (e) to the "net rates based upon the American Experience Table of Mortality," plus 3% interest, adopts the well defined standard net rates to which Senator Harrison referred in his example.[22]

3. The maximum insurance issuable under the Act (Section 602 (q), Appendix B, *infra*, p. 77), or in combination with United States Government

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[21] See annual "net rate" premium tables contained in (a) The Principles and Practice of Life Insurance, 8th ed. (1912), p. 142, published by the Spectator Company (original prepared by Nathan Willey, Actuary; new explanatory text by Henry Moir), and (b) The Principles and Practice of Life Insurance, 9th ed. (1939), p. 92, published by Chilton Co. (9th edition revised and edited by Edward B. Fackler).

[22] Under the premium rate schedule for 5-year convertible term United States Government Life Insurance, a serviceman 25 years of age would pay a monthly premium of $.67 per thousand. Federal Laws Relating to Veterans of Wars of the United States, Sen. Doc. No. 131, 72d Cong., 1st sess. (1932), p. 260; Veterans' Administration Form 740, "Premium Rates and Policy Values." The same schedule, with a few, single penny, changes due to the lowering of interest rate from 3½% to 3%, has been used for premium rates on the 5-year level premium term National Service Life Insurance. Veterans' Administration Insurance Form 398, "Information and Premium Rates, National Service Life Insurance," August 1941, p. 19.

Life Insurance (Section 603) (Appendix B, *infra*, p. 77) is expressly limited to $10,000.[22a] The Veterans' Administration has so limited the face value of all insurance policies issued by it under the Act, but, as we have shown, *supra*, pp. 31–32, the Circuit Court of Appeals' construction increases the actual value of many policies, at the time of the insured's death, far in excess of the statutory limit. Regulation 3450, on the other hand, follows the Congressional requirement by establishing the present value of all $10,000 policies on maturity at $10,000, under the American Experience Table. See *supra*, p. 32, and Appendix D, *infra*, at p. 93).

4. Section 605 (b) of the Act (Appendix B, *infra*, pp. 77–78) authorizes the Administration to set aside out of the National Service Life Insurance Fund "such reserve amounts as may be required under accepted actuarial principles, to meet all liabilities under such insurance." Under the ruling below, reserves computed according to accepted actuarial principles to cover the face amounts of the policies would be inadequate to meet all liabilities, since, as we have pointed out above (*supra*, pp. 27–28), the actual payments made to beneficiaries would in a large number of cases exceed the face amount of the policy. Moreover,

[22a] This $10,000 limitation continues the limit which was set in the Act of October 6, 1917, c. 105, 40 Stat. 398, 409, sec. 400, establishing yearly renewable war-risk insurance for World War I servicemen.

there could be no definitely calculated reserves set aside during the insured's lifetime, since the full value of the policy benefits, being wholly dependent on and fluctuating with the age of the beneficiary at the time of the insured's death, would perforce remain uncertain. Congress could certainly not have intended to require reserve amounts to be set aside "under accepted actuarial principles" if the value of the policy benefits were to be so uncertain.

5. We have already discussed Section 602 (h) (1), providing the method of settlement to beneficiaries under 30 years of age (*supra*, pp. 32–35), and shown the gross disparity in the benefits available to, and the treatment of, the two classes of beneficiaries, on respondent's theory. There is no inkling anywhere in the history of the original Act, or its amendments, that Congress desired to require, or even permit, such a wholesale discrimination. See *infra*, pp. 49–50, 55–64.

6. The additional costs resulting from the construction below would not only absorb the portion of the National Service Life Insurance Fund allocated to the payment of dividends to insureds as contemplated by Section 602 (f) of the Act, 38 U. S. C. 802 (f) (Appendix B, *infra*, p. 73) (which dividends were actually under consideration at the time of the entry of the judgment below), but would impose a financial burden on the National Service Life Insurance Fund which the Fund could not discharge at the established

premiums. And, as has been shown (*supra*, pp. 33, 36–37), the Veterans' Administration could not have initially set higher premiums, either legally or actuarially; even if it could have done so, the higher premiums necessary to meet the extra cost would serve to thwart express Congressional purpose, make the insurance too expensive for many servicemen, and, under the original Act, bear very unequally on men with younger beneficiaries. Nor could the premiums be raised now that the insurance contracts are already in effect. Cf. *Lynch* v. *United States*, 292 U. S. 571, 577; *White* v. *United States*, 270 U. S. 175, 180. The Circuit Court of Appeals attempted to escape this dilemma by attributing the additional costs to the special generosity of Congress to older beneficiaries and indicating that the Government was to bear the extra burden (R. 10).

a. This holding does not square with the Act's structure and contravenes specific provisions of the 1940 Act in which Congress plainly indicated the limits of its generosity. Section 606 (Appendix B, *infra*, p. 78) provided that the United States would bear the cost of administration, and authorized the expenditure for that purpose of moneys already appropriated to the Veterans' Administration. Under Section 607 (a) (Appendix B, *infra*, p. 78) the United States also bears the "excess mortality cost and the cost of waiver of premiums on account of total disability traceable to the extra hazard of military or naval

service;" [23] Sections 607 (b) and (c) (Appendix B, *infra*, pp. 78–79) authorize the transfer of funds therefor from the periodic National Service Life Insurance appropriation to the National Service Life Insurance Fund, "a permanent trust fund" established by Section 605 (a) (Appendix B, *infra*, p. 77) out of the premiums paid on account of the insurance, and earnings thereon. Section 609 (a) provides against the recovery of benefit payments erroneously made where it would be inequitable to require repayment, and 609 (b) directs the reimbursement of the National Service Life Insurance Fund for such waived recoveries. Congress obviously intended the Fund, built up by premium payments, to bear the entire cost of benefit payments, except for these three major items of administrative expense, payments attributable to extra military hazards, and of waived recovery of erroneous payments. These are the only costs which the State-

[23] "Excess mortality cost * * * traceable to the extra hazard of military or naval service" refers to the "death of the insured as the result of disease or injury traceable to the extra hazard of military or naval service."

Section 602 (n), 38 U. S. C. 802 (n) authorizes the Administrator to waive payment of premiums on National Service Life Insurance during periods of "continuous total disability of the insured", and specifically provides (*infra*, p. 76) that "premium rates shall be calculated without charge for the cost of the waiver of premiums herein provided." Section 607 requires the United States, rather than the National Service Life Insurance Fund, to bear the cost of this waiver where the disability is "traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator."

ment of the Managers on the Part of the House of Representatives in connection with the Conference Report on the bill (H. Rep. 3002, 76th Cong., 3d sess., p. 62)—the only committee report on the measure (see *infra*, p. 49)—mentions as being assumed by the United States. And in the subsequent appropriation acts these were the sole specific liabilities for which appropriations were made. See *e. g.*, Independent Offices Appropriation Act, 1945, Act of June 27, 1944, c. 286, 58 Stat. 361, 383; Independent Offices Appropriation Act, 1946, Act of May 3, 1945, c. 105, 59 Stat. 106, 129; Independent Offices Appropriation Act, 1947, Act of March 28, 1946, c. 113, 60 Stat. 60, 77. There is no similar assumption, or provision for payment of the cost, of the additional liabilities which the Fund would have to bear under Section 602 (h) (2) as construed below.[24]

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[24] Subsequent amendments to the 1940 Act added certain other costs to be borne by the United States, *e. g.*, insurance granted to servicemen previously denied coverage because of the condition of their health; insurance granted to certain aviators and some servicemen disabled in line of duty. 38 U. S. C., Supp. V, 802 *et seq.* Section 9 of the Insurance Act of 1946, c. 728, 60 Stat. 781, providing for disability *payments* to an insured during a period of disability, directs that the United States bear this liability when it arises from or is traceable to the extra hazard of military or naval service. The Insurance Act of 1946, in Section 11, also authorizes the Administrator to calculate the Government's liability for annuities payable on death resulting from the extra hazard of military or naval service on the basis of more realistic mortality tables than the American Experience Table, even though the monthly benefit installments themselves continue

b. It is inconceivable that Congress intended, in 1940, to impose this great financial burden on the Government in favor of new servicemen (volunteers, and men who at that time were drafted for only one year of military training under the new Selective Training and Service Act of 1940, 54 Stat. 885, 50 U. S. C. App. 301). The Congressional purpose in enacting the National Service Life Insurance Act of 1940 was quite clearly to grant these servicemen benefits which, while liberal, were no greater than had been made available to veterans of World War I; and no such generosity had been shown to the latter.[25] At the time of the passage of the National Service Life Insurance Act of 1940, it was specifically pointed out that,

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to be figured according to the American Experience Table; this means, roughly, that the United States, rather than the Insurance Fund, bears not only the excess mortality cost computed on that table but also carries these annuity payments during that additional period of life expectancy which the more modern mortality tables show over that of the American Experience Table. See *supra*, pp. 5–6, fn. 3. Public Law No. 46, 80th Cong., 1st sess., the First Deficiency Appropriation Act, 1947 (Act of May 1, 1947, c. 49), appropriates $300,000,000 for this purpose. Cf. Hearings before the Subcommittee of the Committee on Appropriations, H. of Reps. 80th Cong., 1st sess., on the First Deficiency Appropriation Bill for 1947, pp. 642–646.

[25] The Veterans' Administration had under the United States Government Life Insurance system provided a life annuity with 240 guaranteed payments as an optional settlement. The monthly installment paid under this option is computed in accordance with the same actuarial principles as used in calculating the monthly installments in Regulation 3450. See *infra*, pp. 46–48.

in the important respect of disability insurance, the new system merely provided waiver of premium without payment of benefits.[26] The new Act likewise did not allow lump sum payments on maturity; it did not provide optional methods of settlement, and it restricted the class of allowable beneficiaries to close relatives.[27] It would be strange if the Congress which thus deliberately refused to go any further than in the old legislation in these and other respects should, without the slightest indication of purpose, embody in the new Act a far greater benefit than was available under the earlier insurance statutes.

c. Furthermore, liability for this vast added burden would of course fall directly upon the United States, and in an astronomical amount which can

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[26] In the very short discussion of the measure on the floor of the Senate, Senator Harrison, in charge of the bill, took occasion to point out that "this new insurance permits waiver of premiums upon total disability, but benefits are not payable for such disability as was the case under war-risk insurance." 86 Cong. Rec. 12920.

[27] The debates on the 1944 and 1946 liberalizing amendments referred to below (pp. 56–64) referred to the original 1940 Act as being less generous than that enacted for the benefit of World War I veterans. 90 Cong. Rec. 8138 (Congressman Rankin), 92 Cong. Rec. 6169 (Congressman Rankin), 6171 (Congresswoman Rogers), 6172 (Congressman Stigler), 6174 (Congressman Scrivner). The 1946 Act (Insurance Act of 1946, c. 728, 60 Stat. 781), among other things, granted for the first time the privilege of lump-sum payments, permitted provision for benefit payments to the insured during disability periods on payment of an extra premium, and removed the restriction on the class of permitted beneficiaries. See *ihfra*, pp. 47–48, 61–62.

only be estimated at the roughest.[28] As Mr. Justice Holmes said, "A liability in any case is not to be imposed upon a government without clear words," and where "the liability would amount to great sums, only the plainest language could warrant a court in taking it to be imposed," *Pine Hill Coal Company* v. *United States*, 259 U. S. 191, 196. In that case, the statutory construction which was adopted involved a duplication of provisions, in violation of the usual canon, but the Court thought that "unnecessary reduplication is far more easy to admit than an enormous charge upon the United States that can be fastened upon it only by inserting into a statute words that are not there." These words are even more applicable to the contention urged upon the Court by respondent, acceptance of which would, in our view, compel the flat disregard of the National Service Life Insurance Act's terms, its structure, and the legislative purpose.

7. These provisions of the Act support, we believe, the propriety of the Veterans' Administration's action in calculating the monthly installments due to beneficiaries 30 years old or over, in accordance with the American Experience Table of Mortality, in order (a) that the actual value of a policy at the time of the death of the

[28] The total potential additional liability has been estimated by General Bradley at approximately eighty-three billion dollars. See Appendix A.

insured calculated on the basis of the American Experience Table be no more than the maximum insurance face amount of $10,000; (b) that the premium rates be the "net rates" required by the law; (c) that an adequate reserve could be put aside under accepted actuarial principles; (d) that the actual value of the policy, on maturity, not be influenced by the accident of whether the beneficiary was less or more than 30; and (e) that the National Service Life Insurance system be self-sustaining, except for the matters Congress expressly required to be borne by the United States.

C. PRACTICE UNDER THE UNITED STATES GOVERNMENT LIFE INSURANCE SYSTEM SUPPORTS THE PROVISIONS OF REGULATION 3450

Although the 1940 Act did not follow the prior government-insurance statutes in all their provisions (*supra*, p. 43), Section 602 (h) (2) does conform to one of the three optional methods of settlement available under the earlier legislation, and should be construed in its light.[29] Option 3

[29] World War Veterans Act, 1924, Title III (Insurance) 43 Stat. 607, 624, as amended, 38 U. S. C. 512 *et seq.*, provides for payment of United States Government Life Insurance in 240 equal monthly installments, but authorizes the Veterans' Administration (formerly the Veterans' Bureau) to provide optional settlements; under this authorization, the Administration provided three options; "Option 1—Insurance payable in one sum" (lump sum); "Option 2—Insurance payable in elected installments" (guaranteed number of installments, running from 36 to 240, at election of insured or, in some cases, beneficiary); "Option 3—Insurance payable in installments throughout life" (discussed in the text), 38

under the United States Government Life Insurance policy, entitled "Insurance payable in installments throughout life," provides that monthly installments in amounts designated in an appended table (the amounts being graduated with the "age of beneficiary at time of death of the insured") "will be payable throughout the lifetime of the designated beneficiary, but if such designated beneficiary dies before 240 such installments have been paid, the remaining unpaid monthly installments will be payable in accordance with the beneficiary provision of the policy." 38 C. F. R. 10.3068 (1939). In our view, this optional provision under United States Government life insurance policies represents the settlement which Congress intended to impose, by Section 602 (h) (2), on all beneficiaries thirty or more years old at maturity, except that the payments certain were to be for 120 months instead of 240. In each case, regular payments were to continue throughout the first beneficiary's life, however long that might be, and if the first beneficiary died before the completion of the guaranteed payments (120 in one, 240 in the other), the remaining unpaid guaranteed installments

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C. F. R. 10.3063, 10.3068. In 1944, the Veterans' Administration added, as a fourth option, a method of settlement based on Regulation 3450; *i. e.*, life annunity with 120 guaranteed payments. See *supra*, p. 30.

The yearly renewable war-risk term insurance, provided under the 1917 amendment to the War Risk Insurance Act (Act of October 6, 1947, c. 105, 40 Stat. 398, 409–410, sec. 402), was payable in 240 equal monthly installments.

were to be paid to the next in line."[30] It is far more reasonable to construe Section 602 (h) (2) as continuing, with some modification, a similar settlement practice under the earlier act than to read it, despite the similarity in concept and wording, as a drastic and unheralded departure from all known governmental or private insurance practice.[31]

D. THE VETERANS' ADMINISTRATION'S CONSISTENT INTERPRETATION OF SECTION 602 (h) (2) IS ENTITLED TO GREAT WEIGHT

1. The National Service Life Insurance Act of 1940 formed one part of the Second Revenue

[30] In the court below, respondent made the patently erroneous argument that Section 602 (h) (2) was designed to embody, not Option 3 under United States Government Life Insurance, but Option 2, "Insurance payable in elected installments." Under the latter option, there was an election to receive the insurance proceeds in a stated number of months, ranging in multiples of 12 from 36 to 240 payments, at the optant's choice, without any life annuity; 120 monthly payments could be selected, and in that case the monthly installment would be $9.83. 38 C. F. R. 10.3068. Completely ignoring the vital fact that Section 602 (h) (2) provides for payments throughout the first beneficiary's life, with 120 payments guaranteed, while the old option 2 was limited to a stated number of payments (*i. e.* 120) without more, respondent urged that Section 602 (h) (2) compelled the use of the $9.83 monthly installment, modified so as to include 3% interest in place of 3½%.

[31] The basic method of settlement (*i. e.*, 240 equal monthly payments) as well as options 1 and 2 under United States Life Insurance policies (*supra*, fn. 29) were added to the National Service Life Insurance system, in substance, by the 1946 amendments (Act of August 1, 1946, c. 728, 60 Stat. 781) (*infra*, pp. 61–62, 87–88) which added (a) the lump sum settlement, and (b) settlement in equal monthly installments

Act of 1940, and was the subject of very little discussion in either house of Congress, since it did not appear in the bill as initially passed and was written entirely in the Conference Committee."

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of from 36 to 240 in number, in multiples of 12. Under the latter method the insurance benefits may be paid in 120 equal monthly installments without any life annuity. See *infra*, pp. 63–64. The 1944 amendment (Act of September 30, 1944, c. 454, 58 Stat. 782) (*infra*, pp. 83–84) had already added the "refund life income" method of payment. *Supra*, pp. 8–9; *infra*, pp. 56–59.

[32] The National Service Life Insurance Act's legislative history is as follows: The President's brief message of September 14, 1940 (H. Doc. 951, 76th Cong., 3d Sess.) referred to the recent statute calling out the national guard and to the pending Selective Service legislation, and recommended legislation preserving social security benefits for the new servicemen. On the same day, with the express view of permitting the matter to go to conference, Senator Vandenberg offered a floor amendment to the Second Revenue bill of 1940, which the Senate was then considering, preserving, in very broad terms, servicemen's social security benefits; the amendment was agreed to without much debate. 86 Cong. Rec. 12173. On September 18, 1940, Senator Harrison, in charge of the bill, announced that the Vandenberg amendment was "not quite broad enough to cover the matter," so that the conferees "could call in the representatives of the departments and have adequate legislation written"; he then offered a substitute amendment "which would broaden the provisions of the bill and enable us to look into the whole subject"; this amendment, which was quickly adopted, authorized the President to establish allotments and allowances for servicemen, to preserve their social security benefits, and "to provide a modified system of insurance for persons serving in such land or naval forces." 86 Cong. Rec. 12252–3.

The Conference Committee drafted the entire Insurance Act in the form in which it was adopted (Title VI of the Second Revenue Act of 1940). The Statement of the Managers on the Part of the House, the only report on the meas-

The Veterans' Administration participated actively in the drafting of the measure, at the request of the Conference Committee, and suggested its major provisions. The Administration was charged by the Act (Section 608, 38 U. S. C.

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ure, does little more than summarize the provisions of the Act. H. Rep. 3002, 76th Cong., 3d Sess., pp. 62–63 (see *supra*, pp. 41–42). There was very little debate in either House on the insurance portions of the conference bill, the main subject of discussion being the excess profits tax. 86 Cong. Rec. 12945–12970 (House of Reps.); 86 Cong. Rec. 12916–12925 (Senate). In the Senate, Senator Harrison made the statements quoted above (*supra*, pp. 33, 43–44) and there was little other discussion. The entire pertinent discussion, in the Senate, follows (86 Cong. Rec. 12920):

"Mr. HARRISON. * * *. Part I of amendment No. 35 permits persons in military service to take out national service life insurance up to $10,000. This insurance is similar to war-risk insurance with certain modifications based on experience gained over the past 20 years. This new insurance permits waiver of premiums upon total disability, but benefits are not payable for such disability as was the case under war-risk insurance. The new insurance will be 5-year-term insurance with the right to convert to life, 20-year life, or 30-year life. Premium rates based on the average age—25 years—will be 67 cents per thousand per month. Rights of World War Veterans under existing law with respect to war-risk insurance are not changed.

"Because that fund has been built up by the older men who served in the World War, we did not feel we ought to impair or injure it. It would also cause a great deal of controversy and trouble, so we did not affect that fund at all.

* * * * *

"Mr. VANDENBERG. Is it presumed to be built comparably with and on the basis of war-risk insurance?

"Mr. HARRISON. Yes. There is not much difference between the two. They are along the same line, but separate and distinct insurance policies are issued under these two services."

808) with the responsibility of administering, executing, and enforcing the statute and with getting the Act's machinery in motion. In fulfillment of this responsibility, Regulation 3450 (Appendix C, *infra,* pp. 89–90) was issued on February 25, 1941, shortly after the Act became law on October 8, 1940. 6 Fed. Reg. 1162, 1166, 38 C. F. R. (Supp. 1941) 10.3450. The construction of Section 602 (h) (2) it embodies had been officially adopted immediately after the Act went into effect and communicated to the service departments and military installations at the end of November 1940. See War Department Circular No. 149, 1940, Section VI (issued December 10, 1940) (giving table of payments to beneficiaries 30 or more years of age which is identical with that contained in Regulation 3450 (*infra,* p. 90)). Since that time, the Veterans' Administration has followed the Regulation consistently, and on its basis has settled many thousands of claims, aggregating more than two billion dollars, and has paid several hundreds of thousands of monthly installments. The Regulation has also been adopted in connection with the 1946 amendment continuing this method of payment as one of four options. See *infra,* pp. 61–62; Regulation 3479, 9 Fed. Reg. 13668–13669. Until the present litigation, the Administration received no complaints that its method of settlement was improper or not authorized by the Act.

From the beginning, the terms of this type of

settlement, and the fact that the payments depended upon the beneficiary's age at the insured's death, were made known, so far as the Veterans' Administration was able to do so, to the servicemen eligible for National Service Life Insurance. The basic informational bulletin (Veterans' Administration Insurance Form No. 398—"Information and Premium Rates: National Service Life Insurance"—issued August 1941), which was widely distributed, repeats the pertinent provisions of Regulation 3450 and includes the table of payments to beneficiaries of the various ages (pp. 9–10). Veterans' Administration Insurance Forms 350 (without physical examination), 350a (with physical examination), the "Applications for National Service Life Insurance" which most applicants in the continental United States filled out and signed, stated (after November 1942) under the heading of "Specific Instructions" that "The amount of the monthly installment [to a beneficiary 30 or more years of age] for each $1,000 of insurance shall be determined by the age of the beneficiary at the date of the death of the insured."[33] The "Change of Beneficiary"

[33] A copy of Form 350a is included in the Hearings before a Subcommittee of the Committee on Finance, U. S. Senate, 78th Cong., 1st sess., on S. 877 and S. 903 at pp. 13–16. A copy of Form 350 is contained in the printed Navy Department Bulletin (30 June 1944): Manual of Instructions on Government Life Insurance, based on Bupers (Bureau of Naval Personnel) and Busanda (Bureau of Supplies and Accounts) Joint Circular Letter 44–765, pp. 32–33.

form (Veterans' Administration Insurance Form 336), first adopted in June 1941, which was signed by insureds desiring to change their beneficiaries, contained specific information concerning the "manner of payment of death benefits," and included the table set out in Regulation 3450. The War and Navy Department instructions likewise referred to the terms of the settlement, and, moreover, stressed the use of Veterans' Administration forms, and the obtaining of information from available Veterans' Administration personnel and facilities.[34] The National Service Life Insurance

[34] 1. War Department Circular No. 125, 1940 (issued October, 1940) quoted a letter from the Administrator of Veterans' Affairs, dated October 9, 1940, on the new Act, and gave general instructions. Circular No. 149, 1940 (issued December 10, 1940) set forth the table of payments to beneficiaries of 30 years of age or over. Other circulars in 1941, 1942, 1943, and 1944 dealt with other aspects of National Service Life Insurance, until Army Regulation No. 600–110, issued September 7, 1944, codified the existing directives. Both the circulars and the Army Regulation (a) set out the method of payment to beneficiaries of 30 or more, (b) emphasized the use of Veterans' Administration forms and information in the processing of insurance applications, and (c) stressed the need for full and careful explanations to all soldiers of the terms and provisions of National Service Life Insurance.

2. The Navy Department issued similar instructions, likewise containing the schedule of benefits payable to beneficiaries 30 or more years of age. Joint letter of Bureau of Supplies and Accounts and Bureau of Navigation, issued November 25, 1940, Subject: National Service Life Insurance, Enclosure (A). See also the later publication, Manual of Instructions on Government Life Insurance (Navy Department Bulletin; dated June 30, 1944), based on Bupers and Busanda Joint Circular Letter 44–765.

Certificate, which was issued in lieu of a regular policy and which most insureds requested be sent to their beneficiaries, provided on its face (in ordinary type) that "Subject to the payment of the premiums required, this insurance is granted under the authority of the National Service Life Insurance Act of 1940, and subject in all respects to the provisions of such Act, of any amendments thereto, and of all regulations thereunder, now in force or hereafter adopted, all of which, together with the application for this insurance, and the terms and conditions published under authority of the Act, shall constitute the contract."

2. Following the often-applied general principle of deference to administrative construction, this Court has already recognized that the consistent administrative construction given government insurance legislation by the Veterans' Administration "is entitled to great weight, 'and such construction is not to be overturned unless clearly wrong, or unless a different construction is plainly required.' *United States* v. *Jackson,* 280 U. S. 183, 193." *United States* v. *Citizens Loan & Trust Co.,* 316 U. S. 209, 214 (payment of war-risk insurance); *United States* v. *Madigan,* 300 U. S. 500, 505 (revival of war-risk policy). This general rule has, of course, special applicability to the National Service Life Insurance system and to Regulation 3450, for "administrative practice, consistent and generally unchallenged * * *

has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new" (*Norwegian Nitrogen Products Co.* v. *United States*, 288 U. S. 294, 315; *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, 549; *Adams* v. *United States*, 319 U. S. 312, 314–315; *Edward's Lessee* v. *Darby*, 12 Wheat. 207, 210), especially where, as here, the agency participated in drafting the measure. *United States* v. *American Trucking Assns., Inc., ibid.* We have already shown (*supra*, pp. 18–48) that there is, at the very least, more than reasonable basis for the Veterans' Administration's construction of Section 602 (h) (2), and that the statutory terms are far from compelling respondent's interpretation. In view of this consistent administrative practice since 1940, and of the Veterans' Administration's special connection with and responsibility for National Service Life Insurance, the court below clearly erred in setting aside its hitherto unchallenged regulation.

E. THE LEGISLATIVE HISTORY AND TERMS OF THE 1944 AND 1946 AMENDMENTS TO THE ACT SUPPORT THE REGULATION'S VALIDITY

The legislative history, as well as the terms, of the 1944 and 1946 amendments to the Act, although subsequent to the maturity of respondent's claim (May 12, 1943) (R. 2), demonstrates, in

our view, that Congress was aware of the construction given to Section 602 (h) (2) by the Veterans' Administration and agreed with that reading.[35]

1. *1944 Amendment:* In June 1944, the Administrator of the Veterans' Administration sent to Congress a proposed bill (S. 2015, 78th Cong., 2d sess.), accompanied by a letter recommending certain amendments to the Act, including authorization for the "election of a refund life income in lieu of the mode of payments now provided."[36] The bill was referred to the Senate Committee on Finance, which adopted the Administrator's letter as its own report and recommended passage of the bill without amendment. S. Rep. 1105, 78th Cong., 2d sess. The bill was passed by both Houses without debate on this provision. 90 Cong. Rec. 7983–4 (Senate), 8137–8 (House). Act of September 30, 1944, 58 Stat. 762, 763, "An Act to liberalize certain provisions of the National Service Life Insurance Act of 1940, as amended."

Section 6 of this Act (Appendix B, *infra*, p. 84) amended Section 602 (h) (2) by authorizing the Administrator to permit the insured or his beneficiary to elect, in lieu of the life annuity with 120 payments certain provided by the original Act for beneficiaries of 30 or more, a "refund life

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[35] The pertinent legislative history of the original 1940 Act is outlined at *supra*, pp. 49–50, fn. 32.

[36] The refund life income method of settlement is described *supra*, p. 8.

income." [37] This option was to be limited, however, to those cases in which payments of insurance installments had not been commenced prior to the date of the amendatory Act (September 30, 1944),[38] nor was the option to be available where the refund life income settlement would result in less than 120 guaranteed installments.

The Administrator's letter, recommending the alternative method of settlement, pointed out that under the original terms of Section 602 (h) (2) the total installments paid did not equal the face amount of the policy where a young beneficiary died within or shortly after ten years, and that hardship might result, especially in the case of the premature death of a young widow with children. S. Rep. 1105, p. 2. The Administrator stated that the proposed amendments would "authorize the payment of the full face value of the insurance in every instance and will also insure an income throughout the lifetime of the first beneficiary under the policy" (*ibid*). A table was included, comparing (a) the amount of each monthly installment and (b) the sum of the guaranteed installments, under the proposed re-

[37] Section 5 of the 1944 statute (Appendix B, *infra*, p. 83) added a similar provision for a refund life income option to Section 602 (h) (1), which concerns beneficiaries under 30 years of age.

[38] The Insurance Act of 1946 (*infra*, pp. 60, 62, 85–87) abolished this restriction and permitted the refund life income option to be available in cases in which insurance payments were commenced prior to Sept. 30, 1944.

fund life income settlement and under Section 602 (h) (2), as it then stood. From this table it clearly appeared that at least until the beneficiary was over 60 at maturity the total of guaranteed installments under the old method of settlement was below the face amount of the policy, while the new method guaranteed payment of the face amount in all cases. (*Id.*, p. 3.)

Congress was thus apprised, in plainest terms, of the construction placed on Section 602 (h) (2) by the Veterans' Administration. The absence of even the slightest indication of disapproval, let alone any attempt to alter the language of the original method of settlement or to "correct" past settlements, supports the inference of Congressional acquiescence in the administrative construction. Cf. *Johnson* v. *Manhattan Ry. Co.*, 289 U. S. 479, 500.

The addition of the alternative method of settlement, moreover, demonstrates that Congress not only acquiesced in that construction but affirmatively approved it. If the original Section 602 (h) (2) had required, as respondent avers, that the full face amount of the policy plus interest be paid in the first ten years, and the same amount every extra ten years thereafter that the first beneficiary lived (R. 11–12), there would have been no necessity for adopting the alternative refund life income method of settlement. That method, *which guarantees only the face amount of the pol-*

icy and not interest (see *supra*, p. 8),[39] would manifestly be a poor substitute for a guarantee of payment of the face amount *plus interest* in the first ten years after maturity, and thereafter for every decade of the beneficiary's life. Congress would be in the position of amending the Act ostensibly to confer an added benefit but actually providing an election under which the beneficiary would receive far less than was made available by the original statute. The adoption of the alternative method of settlement becomes reasonable only under the Veterans' Administration's construction, since only then could less than the full face amount be paid out in any case, the hard-

[39] Since only the face amount is guaranteed under the refund life income plan, the *present value* of the *guaranteed payments* under this settlement at the death of the insured, is less than the face amount of the policy, as the following table indicates:

Age of beneficiary	Monthly installment	Number of payments guaranteed	Present value of guaranteed payments per $1,000 of insurance at 3 percent interest
10	$3.39	304	$704.78
20	3.46	288	717.86
30	3.76	265	734.68
40	4.26	235	760.34
50	5.04	189	791.99
54	5.46	165	804.45
60	6.34	139	828.65
66	8.07	104	862.84

If the first beneficiary dies at or before the end of the guaranteed payments, only the face amount of the policy, without interest, is paid out.

ships discussed in the Administrator's letter result, and any "liberalization" of the original Act flow from the amendment. The court below ignored the significance of these facts when it put aside the legislative history of the 1944 statute as irrelevant (R. 9–11).

2. *1946 amendment.*—The history of the 1946 amendment (Insurance Act of 1946, Act of August 1, 1946, c. 728, 60 Stat. 781) similarly proves that Congress has approved of Regulation 3450.[40] Section 8 of the bill proposed to amend Section 602 (h) (2) to permit policies on which payments had been made prior to the 1944 act to elect the refund life income plan (*supra*, pp. 8, 56–57), and in that connection it was again recognized, this time by the House Committee on World War Veterans' Legislation, that the aggregate amount of installments actually paid under the original section (life annuity with 120 payments certain) might

[40] The bill was H. R. 6371, 79th Cong., 2d sess. Hearings on the subject were previously held by the House Committee on World War Veterans' Legislation. Hearings before the Committee on World War Veterans' Legislation, H. of Reps., 79th Cong., 2d sess., on H. R. 4965 and H. R. 2379 (Feb. 28, March 1, 13, 14, 1946). The bill was reported favorably to the House (H. Rep. 2002, 79th Cong., 2d sess.) and passed on June 3, 1946. 92 Cong. Rec. 6166–6174. The Senate Committee on Finance reported the bill favorably, with amendments (S. Rep. 1705, 79th Cong., 2d sess.) and it was passed by the Senate without debate. 92 Cong. Rec. 9207–9212. The House concurred in the Senate amendments. 92 Cong. Rec. 9569.

in many instances amount to much less than the policy's face. H. Rep. 2002, p. 5.[41]

The Committee also recommended the addition of a new Section 602 (t), providing *four* optional methods of settlement for all policies *thereafter maturing:* (1) lump sum, (2) in equal monthly installments of from 36 to 240 in number, in multiples of 12, (3) 120 guaranteed payments, with

[41] The report states (p. 5):

"The refund life income mode of payment insures payment of the full face value of the contract less any indebtedness with such payments continuing throughout the lifetime of the first beneficiary to receive payments. Insurance which matured prior to September 30, 1944, could only be paid to a beneficiary under 30 years of age in 240 monthly installments or to a beneficiary 30 or more years of age in 120 installments certain with payments continuing throughout the lifetime of such beneficiary. In case the beneficiary was under 30 years of age the full face value of the insurance with interest was payable provided any person within the permitted class of beneficiaries survived to receive such payments. If the beneficiary was 30 years or more of age and died within 120 months after the insured's death, the remainder of the 120 installments not paid to the beneficiary was payable to the alternate beneficiary or if no alternate beneficiary was designated to the insured's spouse, child, parent, brothers, or sisters, in the order named. In many instances the aggregate amount of insurance actually payable under this mode of settlement amounted to much less than the face of the policy, and in many cases payments will have been completed before minors have reached an age when they will be able to support themselves. For example the veteran having $10,000 insurance names his wife, age 30, as beneficiary. He died January 1, 1942, leaving his widow and a minor child, age 2. The widow dies January 1, 1943, after having received 12 installments of insurance at the rate of $39.70, a total of $476.40. The child will be entitled to 108 installments at the same rate or a total of $4,287.60. The

payments continuing during the first beneficiary's remaining lifetime (without regard to whether the beneficiary was under or over 30 at the insured's death); and (4) refund life income. The Senate Committee on Finance, although it amended H. R. 6371 by complete substitution of its own bill, effected no pertinent changes in the sections with which we are concerned.[42] The Senate version also recommended a new Section 602 (t), containing the same four options as settlements for policies thereafter maturing (S. Rep. 1705, 79th Cong., 2d Sess., p. 6), and the Act carried these proposals into law (Appendix B, *infra*, pp. 84–88).

The language of option (3), it is to be noted, is virtually identical with that contained in the original Section 602 (h) (2), and was obviously designed to continue that mode of settlement. Option 4 (refund life income) was carried over from the 1944 statute. The first and second options were new, and conformed closely to two

total amount of insurance payable under this $10,000 policy is $4,764 and payments will have been completed when the child is 12 years of age. Your committee is of the opinion that the present beneficiary of insurance which matured prior to September 30, 1944, should have the same right of securing payment of insurance under a mode of settlement which will provide payment of the face value of the contract with the certainty of the payments continuing throughout the lifetime of the present beneficiary."

[42] It allowed additional time beyond that fixed in the House bill within which beneficiaries who had received payments prior to September 30, 1944, could elect to change over to the refund life income. H. Rep. 2002, p. 14 (one year); S. Rep. 1705, p. 4 (two years).

of the options which had long been available under United States Government Life Insurance, and for which there had been great demand by World War II veterans. See *supra*, pp. 44, 46–48.

The options provided by the 1946 Act, and the continued inclusion of a life annuity with 120 guaranteed payments as one of the four optional settlements, manifest, we believe, further Congressional recognition and approval of the construction placed on Section 602 (h) (2) by the Veterans' Administration. There is, first, the extension of the refund life income plan to policies on which payments had been made prior to the 1944 act, and the terms in which that proposal was discussed. *Supra*, pp. 60–61; cf. 92 Cong. Rec. 6173–6174 (Congressman Scrivner). Next, it is highly pertinent that both Committees recommended that options (3) and (4) be not available to firms, corporations, legal entity, etc., "because payments in such cases could not be based upon the life of an individual * * *" H. Rep. 2002, p. 7; S. Rep. 1705, p. 6.

Finally and most significantly, the respondent's view leads to unreasonable discriminations in the statute's effect. Thus, the second option includes an election to receive the insurance proceeds in 120 guaranteed payments with no additional installments; on the respondent's construction, the same monthly payments would be made under this option and under option (3) for 120 months, but one who had selected the latter would

unaccountably continue to receive installments for the remainder of his life while the other optant would find his insurance income ended. This is but an illustration of the crucial fact that only the Veterans' Administration's interpretation will fit option (3) into the structure of the Act. For it is clear that the total payments under the three methods of settlement, other than option (3), would not, on the average, exceed the face amount of the policy, plus interest where payment is delayed, and that, under those three plans, the policy's present value at the time of the insured's death would not exceed the face amount. It would be extraordinary to attribute to Congress an intent to permit, via option (3), a method of settlement which, on the construction below, would have an actual value on maturity far in excess of its face amount. *Supra,* p. 32.[11] If this were the case, the other options would become meaningless for all practical purposes, since the third option, because of its disproportionate value compared to the premiums paid and to the other options, would be selected in the vast majority of cases, particularly since an insured,

[11] The Circuit Court of Appeals justified its construction of Section 602 (h) (2) by the assumption that Congress might have intended special benefits to older beneficiaries who would presumably find it harder to earn livelihoods (R. 10), but that method of settlement—life annuity with 120 guaranteed payments—is now available, as option (3), to beneficiaries of all ages.

spurred by this near-certainty of large gain, would designate the youngest beneficiary possible consistent with his circumstances.

3. We believe, as we have argued (*supra*, pp. 18–55), that Section 602 (h) (2) of the 1940 Act plainly supports Regulation 3450. But if there be doubt, the 1944 and 1946 amendments surely swing the balance. These are statutes dealing with precisely the same subject matter, and in them Congress has given "complete demonstration of the legislative sense of its own language" (*Alexander* v. *Mayor and Commonalty of Alexandria*, 5 Cranch 1, 8) in the initial Act. We have shown that the entire structure of the National Service Life Insurance Act, as it now stands, refutes the Circuit Court's construction of the life-annuity-with-120-guaranteed-payments method of settlement and demands the interpretation embodied in Regulation 3450. No other reading makes sense. This being so, the later enactments present powerful proof of the original statute's scope. Cf. *Alexander* v. *Mayor and Commonalty of Alexandria*, 5 Cranch 1, 8; *United States* v. *Freeman*, 3 How. 556, 564–565; *Cope* v. *Cope*, 137 U. S. 682, 688–689; *Tiger* v. *Western Investment Co.*, 221 U. S. 286, 309; *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 277.

CONCLUSION

For the foregoing reasons, we respectfully sub-

mit that the judgment below is erroneous and should be reversed.

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JANUARY 1948.

APPENDIX A

LETTER FROM THE VETERANS' ADMINISTRATION

VETERANS' ADMINISTRATION,
Washington 25, D. C., October 24, 1947.

The Honorable PHILIP B. PERLMAN,
The Solicitor General,
The Department of Justice,
Washington 25, D. C.

DEAR MR. SOLICITOR GENERAL: This is in response to your request for information as to the probable effect on National Service Life Insurance if payments thereunder are required to be made in accordance with the decision of the Seventh Circuit Court of Appeals in the case of *Zazove* vs. *The United States.*

If settlement is required to be made in this manner, each beneficiary of National Service Life Insurance who is entitled to receive payment under a life income with instalments guaranteed for 120 months, would receive $96.10 a month on a policy maturing by death for $10,000, irrespective of the age of the beneficiary at the death of the insured. It should be noted that for insurance maturing prior to August 1, 1946, this settlement was not available to beneficiaries under age 30 at the death of the insured, but for insurance maturing since that date it is available to all beneficiaries. Although age would not be a factor in determining the amount of the instalments, it would be a factor in determining the value of the income as of the date of the insured's death, since

that value depends in part upon the length of the time the beneficiary may be expected to live to receive the income, and that length of time decreases with age. It also varies as to whether the beneficiary is a man or a woman, being, on the average, longer for women than for men of the same age. The following table gives estimates of the value of the income for various ages, male, and female, as of the date of the insured's death.

Age of payee at death of insured	Value of $96.10 per month for life, 120 months certain		Age of payee at death of insured	Value of $96.10 per month for life, 120 months certain	
	Male	Female		Male	Female
10	$31,572	$32,319	50	$19,473	$21,109
20	29,358	30,308	54	17,780	19,473
30	26,600	27,758	60	15,257	16,930
40	23,375	24,743	70	11,775	12,973

The values are based on the actual mortality of National Service Life Insurance beneficiaries under the life income optional settlements, with interest assumed at the rate of 3% a year.

On the approximately 2.1 billion dollars of death claims already incurred and now being settled under the life income with instalments guaranteed for 120 months, it is estimated that the additional liability that would result if settlement is required to be made as indicated in the Zazove opinion would amount to approximately 1.8 billion dollars, using the same assumptions as above.

In estimating the potential liability on policies now in force, and yet to mature, certain additional assumptions have to be made. For example, it is not unlikely that most of those now carrying term insurance would convert to a permanent plan, such as Ordinary Life. Also, many of those having

insurance on an endowment plan would probably attempt to convert to a whole life plan since the extraordinary values that would result from the settlement referred to could be realized only when a policy matures as a death claim, and not when it matures as an endowment. It is also necessary to make some assumptions as to the probable age and sex of the beneficiary at the death of the insured. Referring to the values shown above, it is apparent that the value of the income is greatest at the youngest ages and is greater for women than for men of the same age. Thus it might be expected that in order to derive the greatest value, most insureds would name a relatively young woman or a child as beneficiary. Assuming, then, that the insurance now in force, estimated at 35 billions, would all be held to mature at death and that the typical beneficiary would be a woman aged 30, say, at the death of the insured, and that all policies would be settled under the life income option with instalments guaranteed for 120 months, the potential liability might be about 97 billion dollars instead of 35 billion dollars, an increase of 62 billions. It should be pointed out that the increase would not all take place at once. It would be spread over many years as the policies matured one by one as death claims.

Another major consideration is the potential additional liability in respect to reinstatement of lapsed policies. It is impossible, of course, to foretell how much National Service Life Insurance now lapsed would be reinstated. If 10% of all lapsed policies were reinstated, the potential additional liability would be about 19.7 billion dollars, on the basis of the assumptions already

made. If some different percentage were reinstated, the potential additional liability would be in proportion.

Very truly yours,

[S] Omar N. Bradley,
OMAR N. BRADLEY,
General, U. S. Army, Administrator.

APPENDIX B

STATUTES INVOLVED

1. The National Service Life Insurance Act of 1940 (Part I, Title VI of the Second Revenue Act of 1940, Act of October 8, 1940, c. 757, 54 Stat. 974, 1008, 38 U. S. C. 801 *et seq.*) provides as follows:

> TITLE VI—NATIONAL SERVICE LIFE INSURANCE AND PROVISIONS AFFECTING THE RAILROAD RETIREMENT BOARD
>
> PART I—NATIONAL SERVICE LIFE INSURANCE
>
> SEC. 601. When used in this part—
>
> (a) The term "person" means (1) a commissioned officer; (2) a warrant officer; (3) enlisted personnel (including persons selected for training and service under the Selective Training and Service Act of 1940); (4) a member of the Army Nurse Corps (female); and (5) a member of the Navy Nurse Corps (female);
>
> (b) The term "Administrator" means the Administrator of Veterans' Affairs;
>
> (c) The term "active service" means active service in the land or naval forces (including the Coast Guard) of the United States and service in the land or naval forces of the United States under the Selective Training and Service Act of 1940, but the service of any person ordered to active duty in any such force for a period of thirty days or less, shall not be deemed to be active service in such force during such period;

(d) The term "insurance" means National Service Life Insurance;

(e) The term "child" includes an adopted child.

SEC. 602. (a) Every person who is commissioned and hereafter ordered into, or who is hereafter examined, accepted, and enrolled in, the active service and while in such active service shall, upon application in writing (made within one hundred and twenty days after entrance into such active service) and payment of premiums as hereinafter provided and without further medical examination, be granted insurance on the five-year level premium term plan by the United States against the death of such person occurring while such insurance is in force.

(b) Any person who is released from active service within one hundred and twenty days after such enrollment shall be granted such insurance upon application therefor in writing (made within one hundred and twenty days after a subsequent enrollment or entrance into active service and before discharge or resignation therefrom), and upon payment of premiums and evidence satisfactory to the Administrator showing such person to be in good health at the time of such application.

(c) Any person upon reenlistment or reentrance into or reemployment in active service and before discharge or resignation therefrom and any person in the active service upon discharge to accept a commission and before resignation therefrom, shall be granted such insurance upon application therefor in writing (made within one hundred and twenty days following such reenlistment, reentrance, reemployment, or discharge to accept a commission),

and upon payment of premiums and evidence satisfactory to the Administrator showing such person to be in good health at the time of such application.

(d) Any person who has been commissioned, or examined, accepted, and enrolled, in the active service and is in such active service on the date of enactment of this Act shall be granted such insurance upon application therefor in writing (made within one hundred and twenty days after the date of enactment of this Act and before discharge or resignation from such active service), and upon payment of premiums and evidence satisfactory to the Administrator showing such person to be in good health at the time of such application.

(e) The premium rates for such insurance shall be the net rates based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum. All cash, loan, paid up, and extended values, and all other calculations in connection with such insurance, shall be based upon said American Experience Table of Mortality and interest at the rate of 3 per centum per annum.

(f) Such insurance shall be issued upon the five year level premium term plan, with the privilege of conversion as of the date when any premium becomes or has become due, or exchange as of the date of the original policy, upon payment of the difference in reserve, at any time after such policy has been in effect for one year and within the five year term period, to policies of insurance upon the following plans: Ordinary life, twenty payment life, thirty payment life. All five year level premium term policies shall cease and terminate at

the expiration of the five year term period. Provisions for cash, loan, paid up, and extended values, dividends from gains and savings, refund of unearned premiums, and such other provisions as may be found to be reasonable and practicable, may be provided for in the policy of insurance or from time to time by regulations promulgated by the Administrator.

(g) The insurance shall be payable only to a widow, widower, child (including a stepchild or an illegitimate child if designated as beneficiary by the insured), parent (including person in loco parentis if designated as beneficiary by the insured), brother or sister of the insured. The insured shall have the right to designate the beneficiary or beneficiaries of the insurance, but only within the classes herein provided, and shall, subject to regulations, at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries but only within the classes herein provided.

(h) Such insurance shall be payable in the following manner:

(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments.

(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary.

(3) Any installments certain of insurance remaining unpaid at the death of any beneficiary shall be paid in equal monthly

installments in an amount equal to the monthly installments paid to the first beneficiary, to the person or persons then in being within the classes hereinafter specified and in the order named, unless designated by the insured in a different order—

(A) to the widow or widower of the insured, if living;

(B) if no widow or widower, to the child or children of the insured, if living, in equal shares;

(C) if no widow, widower, or child, to the parent or parents of the insured, if living, in equal shares;

(D) if no widow, widower, child, or parent, to the brothers and sisters of the insured, if living, in equal shares.

(i) If no beneficiary is designated by the insured or if the designated beneficiary does not survive the insured, the beneficiary shall be determined in accordance with the order specified in subsection (h) (3) of this section and the insurance shall be payable in equal monthly installments in accordance with subsection (h) (1) or (2), as the case may be. The right of any beneficiary to payment of any installments shall be conditioned upon his or her being alive to receive such payments. No person shall have a vested right to any installment or installments of any such insurance and any installments not paid to a beneficiary during such beneficiary's lifetime shall be paid to the beneficiary or beneficiaries within the permitted class next entitled to priority, as provided in subsection (h).

(j) No installments of such insurance shall be paid to the heirs or legal representatives as such of the insured or of any beneficiary, and in the event that no person within the permitted class survives to re-

ceive the insurance or any part thereof no payment of the unpaid installments shall be made.

(k) When the amount of an individual monthly payment is less than $5, such amount may, in the discretion of the Administrator, be allowed to accumulate without interest and be disbursed annually.

(l) Any payments of insurance made to a person represented by the insured to be within the permitted class of beneficiaries shall be deemed to have been properly made and to satisfy fully the obligation of the United States under such insurance policy to the extent of such payments.

(m) The Administrator shall, by regulations, prescribe the time and method of payment of the premiums on such insurance, but payments of premiums in advance shall not be required for periods of more than one month each, and may at the election of the insured be deducted from his active-service pay or be otherwise made.

(n) Upon application by the insured and under such regulations as the Administrator may promulgate, payment of premiums on such insurance may be waived during continuous total disability of the insured which commenced subsequent to the effective date of such insurance and which has existed for six consecutive months or more prior to the attainment by the insured of the age of sixty years, effective as of the due date of the monthly premium becoming payable on or after the first day of the seventh consecutive month of such disability: *Provided*, That application for waiver is made while the insurance is currently kept in force by the payment of premiums, and the insured furnishes proof satisfactory to the Administrator showing

that he is and has been continuously totally disabled for six or more months prior to attaining sixty years of age. Any waiver granted by the Administrator under this subsection shall not become effective prior to the date of application therefor; except that, in the discretion of the Administrator, it may be made effective at any time within a period of not more than six months prior to such date but in no event prior to the first day of the seventh month of such continuous disability. Any premiums tendered to cover a period during which such waiver is effective shall be refunded. The Administrator shall provide by regulations for reexaminations of beneficiaries under this subsection and, in the event that it is found that an insured is no longer totally disabled, the waiver of premiums shall cease as of the date of such finding and the policy of insurance may be continued by payment of premiums as provided in said policy. Premium rates shall be calculated without charge for the cost of the waiver of premiums herein provided and no deduction from benefits otherwise payable shall be made on account thereof.

(o) The Administrator shall promptly determine and publish the terms and conditions of such insurance. Pending the promulgation of the terms and conditions of the five year level premium term policy and the printing of such policy, the Administrator may issue a certificate in lieu thereof as evidence that insurance has been granted and the rights and liabilities of the applicant and of the United States shall be those specified by the terms and conditions of the policy when published.

(p) Such insurance may be made effective, as specified in the application, not later than the first day of the calendar

month following the date of application therefor, but the United States shall not be liable thereunder for death occurring prior to such effective date.

(c) Such insurance shall be issued in any multiple of $500 and the amount of such insurance with respect to any one person shall be not less than $1,000 or more than $10,000.

SEC. 603. No person may carry a combined amount of National Service Life Insurance and United States Government life insurance in excess of $10,000 at any one time.

SEC. 604. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this part, to be known as the National Service Life Insurance appropriation, for the payment of liabilities under National Service Life Insurance. Payments from this appropriation shall be made upon and in accordance with awards by the Administrator.

SEC. 605. (a) There is hereby created in the Treasury a permanent trust fund to be known as the National Service Life Insurance Fund. All premiums paid on account of National Service Life Insurance shall be deposited and covered into the Treasury to the credit of such fund, which, together with interest earned thereon, shall be available for the payment of liabilities under such insurance, including payment of dividends and refunds of unearned premiums. Payments from this fund shall be made upon and in accordance with awards by the Administrator.

(b) The Administrator is authorized to set aside out of such fund such reserve amounts as may be required under accepted

actuarial principles, to meet all liabilities under such insurance; and the Secretary of the Treasury is hereby authorized to invest and reinvest such fund, or any part thereof, in interest-bearing obligations of the United States or in obligations guaranteed as to principal and interest by the United States, and to sell such obligations for the purposes of such fund.

SEC. 606. The United States shall bear the cost of administration in connection with this part, including expenses for medical examinations, printing and binding, and for such other expenditures as are necessary in the discretion of the Administrator. The appropriations made for the Veterans' Administration for the fiscal year 1941 for administrative expenses shall be available for the payment of such costs of administration under this part.

SEC. 607. (a) The United States shall bear the excess mortality cost and the cost of waiver of premiums on account of total disability traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator.

(b) Whenever benefits under such insurance become payable because of the death of the insured as the result of disease or injury traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator, the liability for payment of such benefits shall be borne by the United States in an amount which, when added to the reserve of the policy at the time of death of the insured, will equal the then value of such benefits under such policy. The Administrator is authorized and directed to transfer from time to time from the National Service Life Insurance appropriation to

the National Service Life Insurance Fund such sums as may be necessary to carry out the provisions of this section.

(c) Whenever the premiums under such insurance are waived as provided in section 602 (n) because of the total disability of the insured as the result of disease or injury traceable to the extra hazard of military or naval service, as such hazard may be determined by the Administrator, the premiums so waived shall be paid by the United States and the Administrator is authorized and directed to transfer from time to time an amount equal to the amount of such premiums from the National Service Life Insurance appropriation to the National Service Life Insurance Fund.

SEC. 608. The Administrator, subject to the general direction of the President, shall administer, execute and enforce the provisions of this part, shall have power to make such rules and regulations, not inconsistent with the provisions of this part, as are necessary or appropriate to carry out its purposes, and shall decide all questions arising hereunder. All officers and employees of the Veterans' Administration shall perform such duties in connection with the administration of this part as may be assigned to them by the Administrator. All official acts performed by such officers or employees designated therefor by the Administrator shall have the same force and effect as though performed by the Administrator in person. Except in the event of suit as provided in section 617 thereof, all decisions rendered by the Administrator under the provisions of this part, or regulations issued pursuant thereto, shall be final and conclusive on all

questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by motion or otherwise any such decision.

SEC. 609. (a) There shall be no recovery of payments made under this part from any person who, in the judgment of the Administrator, is without fault on his part and where, in the judgment of the said Administrator, such recovery would defeat the purpose of benefits otherwise authorized herein or would be against equity and good conscience. No disbursing officer or certifying officer shall be held liable for any amount paid to any person where the recovery of such amount is waived under this section.

(b) Where, under the provisions of this section, the recovery of a payment made from the National Service Life Insurance Fund is waived, the National Service Life Insurance Fund shall be reimbursed for the amount of such payment from the current appropriation for National Service Life Insurance.

SEC. 610. No State law providing for presumption of death shall be applicable to claims for National Service Life Insurance. If evidence satisfactory to the Administrator is produced establishing the fact of the continued and unexplained absence of any individual from his home and family for a period of seven years, during which period no evidence of his existence has been received, the death of such individual as of the date of the expiration of such period may, for the purposes of this part, be considered as sufficiently proved.

SEC. 611. No United States Government life insurance shall be granted hereafter

to any person under the provisions of section 300 of the World War Veterans' Act, 1924, as amended: *Provided,* That this section shall not be construed to prohibit the issue of United States Government life insurance policies in cases in which acceptable applications accompanied by proper and valid remittances or authorizations for the payment of premiums have, prior to the date of enactment of this Act, been received by the Veterans' Administration or which have, prior to said date, been placed in the mails properly directed to said Veterans' Administration, or been delivered to an authorized representative of the War Department, the Navy Department, or the Coast Guard, and which are forwarded to the Veterans' Administration not later than one hundred and twenty days subsequent to said date.

SEC. 612. Any person guilty of mutiny, treason, spying, or desertion, or who, because of conscientious objections, refuses to perform service in the land or naval forces of the United States or refuses to wear the uniform of such force, shall forfeit all rights to insurance under this part. No insurance shall be payable for death inflicted as a lawful punishment for crime or for military or naval offense, except when inflicted by an enemy of the United States; but the cash surrender value, if any, of such insurance on the date of such death shall be paid to the designated beneficiary, if living, or otherwise to the beneficiary or beneficiaries within the permitted class in accordance with the order specified in section 602 (h) (3).

SEC. 613. Whoever in any claim for insurance issued under the provisions of

this part makes any sworn statement of a material fact knowing it to be false, shall be guilty of perjury and shall, upon conviction thereof, be punished by a fine of not more than $5,000, or by imprisonment for not more than two years, or by both such fine and imprisonment.

SEC. 614. Whoever, with intent to defraud the United States or any beneficiary of such insurance, shall obtain or receive any money or check for National Service Life Insurance without being entitled to the same, shall, upon conviction thereof, be punished by a fine of not more than $2,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

SEC. 615. Any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or in anywise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any application for insurance or reinstatement thereof, waiver of premiums or claim for benefits under National Service Life Insurance for himself or any other person, shall, upon conviction thereof, be punished by a fine of not more than $1,000, or imprisonment for not more than one year, or by both such fine and imprisonment.

SEC. 616. The provisions of Public Law Numbered 262, Seventy-fourth Congress, approved August 12, 1935 (49 Stat. 607), and titles II and III of Public Law Numbered 844, Seventy-fourth Congress, approved June 29, 1936 (49 Stat. 2031), insofar as they are applicable, shall apply to the provisions of this part.

SEC. 617. In the event of a disagreement as to claim arising under this part, suit may be brought in the same manner and subject to the same conditions and limitations as are applicable to United States Government (converted) life insurance under the provisions of sections 19 and 500 of the World War Veterans' Act, 1924, as amended: *Provided*, That in any such suit the decision of the Administrator as to waiver or nonwaiver of premiums under section 602 (n) shall be conclusive and binding on the court.

SEC. 618. This part may be cited as the "National Service Life Insurance Act of 1940".

2. The 1944 Amendment (Act of September 30, 1944, c. 454, 58 Stat. 762) to the National Service Life Insurance Act of 1940 provides in pertinent part:

SEC. 5. Section 602 (h) (1) of the National Service Life Insurance Act of 1940 is hereby amended by substituting a colon for the period at the end thereof and adding the following: "*Provided*, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect in lieu of this mode of payment, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: *Provided further*, That such optional settlement shall not be available in any case

in which payments of insurance installments have been commenced prior to the date of this amendatory Act."

SEC. 6. Section 602 (h) (2) of the National Service Life Insurance Act of 1940 is hereby amended by substituting a colon for the period at the end thereof and adding the following: "*Provided*, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect, in lieu of this mode of payment, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract less any indebtedness with such payments continuing throughout the lifetime of such beneficiary: *Provided further*, That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months, nor in any case in which payments of insurance installments have been commenced prior to the date of this amendatory Act."

3. The 1946 Amendment (Act of August 1, 1946, c. 728, 60 Stat. 781) to the National Service Life Insurance Act of 1940 provides in pertinent parts:

SEC. 5. (a) So much of subsection (h) of section 602 of the National Service Life Insurance Act of 1940, as amended, as precedes paragraph (3) thereof is hereby amended to read as follows:

"(h) Insurance maturing prior to the

date of enactment of the Insurance Act of 1946 shall be payable in the following manner:

"(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments: *Provided*, That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect in lieu of this mode of payment and prior to the commencement of payments, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: *Provided further*, That in any case in which insurance benefit payments were commenced prior to September 30, 1944, the beneficiary, whether or not the first beneficiary, shall have the right to elect to receive a refund life income, as provided in such optional settlement, payable in monthly installments adjusted as of the date of the maturity of such policy, credit being allowed for payments previously made on the insurance. The right of election with respect to cases in which benefit payments were commenced prior to September 30, 1944, shall terminate two years after the date of enactment of the Insurance Act of 1946. The Administrator is directed to send, within one year after the date of enactment of the Insurance Act of 1946, to each beneficiary of insurance on which payments were commenced prior to September 30, 1944, a notice explaining the

right of election. Any such notice shall be sent by registered mail addressed to the last known address of the addressee.

"(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary: *Provided,* That the Administrator, under regulations to be promulgated by him, may include a provision in the insurance contract authorizing the insured or the beneficiary to elect, in lieu of this mode of payment and prior to the commencement of payments, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of such beneficiary: *Provided further,* That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months: *Provided further,* That in any case in which insurance benefit payments were commenced prior to September 30, 1944, the beneficiary, whether or not the first beneficiary, shall have the right to elect to receive a refund life income, as provided in such optional settlement, payable in monthly installments adjusted as of the date of the maturity of such policy, credit being allowed for payments previously made on the insurance. The right of election with respect to cases in which benefit

payments were commenced prior to September 30, 1944, shall terminate two years after the date of enactment of the Insurance Act of 1946. The Administrator is directed to send, within one year after the date of enactment of the Insurance Act of 1946, to each beneficiary of insurance on which payments were commenced prior to September 30, 1944, a notice explaining the right of election. Any such notice shall be sent by registered mail addressed to the last known address of the addressee."

* * * * *

SEC. 9. Section 602 of the National Service Life Insurance Act of 1940, as amended, is hereby amended by adding at the end thereof the following new subsections:

"(t) Insurance maturing on or subsequent to the date of enactment of the Insurance Act of 1946 shall be payable in accordance with the following optional modes of settlement:

"(1) In one sum.

"(2) In equal monthly installments of from thirty-six to two hundred and forty in number, in multiples of twelve.

"(3) In equal monthly installments for one hundred and twenty months certain with such payments continuing during the remaining lifetime of the first beneficiary.

"(4) As a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of the first beneficiary: *Provided*, That such optional settlement shall not be available in any case in which such

settlement would result in payments of installments over a shorter period than one hundred and twenty months.

Unless the insured elects some other mode of settlement, the insurance shall be payable to the designated beneficiary or beneficiaries in thirty-six equal monthly installments. The first beneficiary may elect to receive payment under any option which provides for payment over a longer period of time than the option elected by the insured, or if no option be designated by the insured, in excess of thirty-six months. If the option selected requires payment to any one beneficiary of monthly installments of less than $10, the amount payable to such beneficiary shall be paid in such maximum number of monthly installments as are a multiple of twelve as will provide a monthly installment of not less than $10. If the present value of the amount payable at the time any person initially becomes entitled to payment thereof is not sufficient to pay at least twelve monthly installments of not less than $10 each, such amount shall be payable in one sum. Options (3) and (4) shall not be available if any firm, corporation, legal entity (including the estate of the insured), or trustee is beneficiary, or in any case in which an endowment contract matures by reason of the completion of the endowment period.

APPENDIX C

Regulation Involved

Regulation 3450 of the Veterans' Administration, 6 Fed. Reg. 1162, 1166, 38 C. F. R. (Supp. 1941) 10.3450 provides:

> *Payment to first beneficiary.*—Upon due proof of the death of the insured while a National Service Life Insurance policy is in force, the monthly installments, without interest, which have accrued since the death of the insured (the first installment being due on the date of death of the insured) and the monthly installments which thereafter become payable in accordance with the provisions of the policy, shall be paid to the beneficiary or beneficiaries entitled in the following manner:
>
> (a) If the beneficiary to whom payment is first made is under thirty years of age at the time of the death of the insured, payment shall be made in 240 equal monthly installments at the rate of $5.51 for each $1,000 of such insurance.
>
> (b) If the beneficiary to whom payment is first made is thirty or more years of age at the time of the death of the insured, payment shall be made in equal monthly installments for 120 months certain, with such payment continuing throughout the remaining lifetime of such beneficiary. The amount of the monthly installment for each $1,000 of insurance shall be determined by the age of the beenficiary as of last birthday at the time of the death of the insured, in accordance with the fol-

lowing schedule based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum:

Age of beneficiary at date of death of insured	Amount of each monthly installment	Age of beneficiary at date of death of insured	Amount of each monthly installment
30	$3.97	58	$6.49
31	4.01	59	6.65
32	4.06	60	6.81
33	4.10	61	6.98
34	4.15	62	7.15
35	4.20	63	7.32
36	4.26	64	7.50
37	4.31	65	7.67
38	4.37	66	7.84
39	4.43	67	8.02
40	4.50	68	8.19
41	4.57	69	8.35
42	4.64	70	8.51
43	4.72	71	8.66
44	4.80	72	8.80
45	4.89	73	8.94
46	4.98	74	9.06
47	5.08	75	9.18
48	5.18	76	9.28
49	5.28	77	9.37
50	5.39	78	9.44
51	5.51	79	9.50
52	5.63	80	9.55
53	5.76	81	9.58
54	5.90	82	9.60
55	6.03	83	9.61
56	6.18	84	9.61
57	6.33	85	9.61

APPENDIX D

CALCULATION OF MONTHLY INSTALLMENTS UNDER SECTION 602 (h) (2) AND COMPARISON OF PRESENT VALUES

1. The monthly installments payable under Section 602 (h) (2), as set out in Regulation 3450, were calculated as follows:

(a) There was first computed the present value, at 3% interest, of a series of 120 installments of $1.00 payable each month for ten years. This figure being for a fixed period and not contingent upon the life expectancy of any person was computed without reference to rates of mortality and was found to be $104.02.

(b) The present value discounted at 3% interest, of a deferred life annuity of monthly installments of $1.00, beginning at the end of the ten years and continuing for the remaining lifetime of the first beneficiary was then calculated. This second figure is dependent on the life expectancy of the first beneficiary and is calculated in accordance with rates of mortality in the American Experience Table of Mortality, the mortality standard prescribed by Section 602 (e) of the Act. The value of this annuity at various ages is set out in paragraph 4 below.

(c) The sum of the figures computed in (a) and (b) above represents the present value of installments of $1.00 payable monthly for 120 months certain and thereafter for the remaining lifetime of the first beneficiary. By dividing this present value

of a $1.00 monthly installment into the face value of the policy, the amount of monthly installments for that value was determined.

2. Under the decision of the Seventh Circuit the amount of the monthly installments may be determined by taking $104.02, the present value discounted at 3% of a monthly installment of $1.00 for 120 months certain, computed as described in 1 (a) and dividing it into the face value of the policy.

3. The use of algebraic symbols may clarify how these calculations were made.

(a) The symbols A, B, and C are defined as follows:

A = Monthly installment paid to beneficiary (in dollars per $1,000 of insurance).

B = The present value, at 3% interest, of the series of 120 monthly installments of $1.00.

C = The present value, at 3% interest, for a beneficiary aged x at insured's death, of a series of monthly installments of $1.00, beginning at the end of 120 months, and continuing for the remainder of the first beneficiary's lifetime.

(b) Using these symbols, the following formula expresses the method of calculating the monthly installment under Regulation 3450:

$$A = \frac{\$1{,}000}{B + C}$$

(c) Using these symbols, the method of computation of the monthly installments

under the decision below is expressed by the following formula:

$$A - \frac{\$1,000}{B}$$

4. The following table gives values for these symbols and formulae at various ages; the values are based on the American Experience Table of Mortality and 3% interest:

Beneficiary's age	Value of B	Value of C	Value of B+C	$1,000 / B	$1,000 / B+C
10	$104.02	$186.20	$290.22	9.61	3.45
20	104.02	169.91	273.93	9.61	3.65
30	104.02	147.73	251.75	9.61	3.97
40	104.02	118.17	222.19	9.61	4.50
50	104.02	81.35	185.37	9.61	5.39
54	104.02	65.60	169.62	9.61	5.89
60	104.02	42.83	146.85	9.61	6.81
70	104.02	13.51	117.53	9.61	8.51

[1] Monthly installment under the decision below.
[2] Monthly installment under Regulation 3450.

5. The following table (also printed *supra*, at p. 32 of the brief) gives the *present value* of the monthly installments payable under Regulation 3450 (Col (5) above) and under the decision below (Col (4) above):

Beneficiary's age	Regulation 3450	Decision below	Beneficiary's age	Regulation 3450	Decision below
10	$1,000	$2,786	50	1,000	1,783
20	1,000	2,632	54	1,000	1,639
30	1,000	2,421	60	1,000	1,411
40	1,000	2,126	70	1,000	1,129

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947.

No. 432

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

TILLIE ZAZOVE,
Respondent.

Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

Respondent's Brief.

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RESPONDENT'S BRIEF.

OPINION BELOW.

Zazove v. U. S., 162 F. 2d 443.

STATEMENT.

Petitioner's statement (Bf. 4) that there was an offer of payment is inaccurate. Nothing was offered. Likewise the statement (Bf. 5-6) that the Veterans' Administration is required to use the American Experience Table of Mortality in calculating insurance payments by Section 602(e) of the Act, is argumentative and whether the Act so requires is the very question to be decided in this case.

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ARGUMENT.

Petitioner's position on the rate question is based largely on administrative construction, supposed to have received legislative approval by silence. The cases we will cite show the present tendency of the courts is to place less and less weight upon such construction, or supposed construction, and to determine such questions for themselves. Many of these cases are opinions written by present members of the Supreme Court. It is interesting to note the increasing emphasis placed upon disapproval of the doctrine until the recent announcement that such theory of approval by silence is fallacious because it would violate the constitutional requirements for legislation that it be embodied in a bill introduced in Congress, passed by it and approved by the President, and would substitute therefor an enactment by an administrative agency, and mere failure of Congress to act thereafter; also because Congress may have failed to act in such a case merely because of pressure of more important business, because of political considerations, or a desire to leave the matter to the courts, or because of various other reasons stated in the opinion below.

The following cases show the trend in chronological order from the earliest times until the most recent:

> "We cannot admit that construction to be a sound one which seeks by remote inference to withdraw a case from the general provisions of a statute which is clearly within its words and perfectly consistent with its intent."
>
> *Carter* v. *Cutting*, 8 Cranch (12 U. S.) 251, 252.

"This section expressly excludes from pre-emption and sale all lands claimed under any foreign grant or title. It is said that this means 'lawfully' claimed; but there is no authority to import a word into a statute in order to change its meaning. Congress did not prejudge any claim to be unlawful, but submitted them all for adjudication."

Newhall v. *Sanger*, 92 U. S. 761, 765.

"The regulations of the Department cannot have the effect of amending the law. They may aid in carrying the law as it exists into execution, but they cannot change its positive provisions."

U. S. v. 200 *barrels of whiskey*, 95 U. S. 571, 576.

"The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute."

U. S. v. *Goldenberg*, 168 U. S. 95, 18 S. Ct. 3, 4.

"From the beginning of the government, various acts have been passed conferring upon executive officers power to make rules and regulations,—not for the government of their departments, but for administering the laws which did govern. None of these statutes could confer legislative power. But when Congress had legislated and enacted its will, it could give to those who were to act under such general provisions 'power to fill up the details,' by the establishment of administrative rules and regulations, * * *"

(then referring to *U. S.* v. *Eaton*, 144 U. S. 677). "Congress required the dealer to keep books, rendering return of materials and products, but imposed no penalty for failing so to do. The Commissioner went much further, and required the dealer to keep books showing oleomargarine received, from whom received and to whom the same was sold. It was sought to punish the defendant for failing to keep the books required by the regulations. Manifestly, this was putting the regulations above the statute. The court showed that when Congress enacted that a certain sort of book should be kept, the Commissioner could go no further and require additional books; or, if he did make such regulation, there was no provision in the statute by which a failure to comply therewith could be punished. It said that, 'if Congress intended to make it an offense for wholesale dealers to omit to keep books and render returns required by regulations of the Commissioner, it would have done so distinctly',—implying that if it had done so distinctly, the violation of the regulations would have been an offense."

U. S. v. *Grimaud*, 220 U. S. 506, 517, 519.

"Especial stress, however, is put upon section 2246. By that section a registrar or receiver is authorized and it is made his 'duty to administer any oath required by the law or the instructions of the General Land Office in connection with the entry of purchase of any tract of land.' * * *

"Acting under the authority presumed to be given by section 2246 and the other sections, a regulation was promulgated, which prescribed forms of taking preemption and final homestead proof by questions and answers, and provided that 'the claimant will be required to testify, as a witness, in his own behalf, in the same manner.' * * * It will be observed, therefore, that the claimant was required to testify as other witnesses. In other words, three witnesses were required; sec. 2291 requires two only, and, as we have said, points out what proof, in addition, the claimant

himself shall give. It is manifest that the regulation adds a requirement which that section does not, and which is not justified by sec. 2246. To so construe the latter section is to make it confer unbounded legislative powers. What, indeed, is its limitation? If the Secretary of the Interior may add by regulation one condition, may he not add another? If he may require a witness or witnesses in addition to what sec. 2291 requires, why not other additions; and the disposition of public lands thus be taken from the legislative branch of the government and given to the discretion of the Land Department? It is not an adequate answer to say that the regulation must be reasonable. The power to make it is expressed in general terms. If given at all, it is as broad as its subject, and may vary with the occupant of the office. This is to make conditions of title, not to regulate those constituted by the statute."

U. S. v. *George*, 228 U. S. 14, 20-1.

"Nothing is better settled than that in the construction of a law its meaning must first be sought in the language employed. If that be plain, it is the duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it. • • •

"As to the insistence that the Internal Revenue Department had determined that a beverage containing one-half of 1 per cent. of alcohol should be regarded as intoxicating within the intendment of the act before us little need be said. Nothing in the act remits the determination of that question to the decision of the revenue officers of the government. While entitled to respect, as such decisions are, they cannot enlarge the meaning of a statute enacted by Congress. Administrative rulings cannot add to the terms of an act of Congress and make conduct criminal which such laws leave untouched."

U. S. v. *Standard Brewery*, 251 U. S. 210, 217, 219-20, 40 S. Ct. 139, 140, 141.

"It must be apparent, we think, that the words of the provision, 'any existing or future contract,' read with literal exactness, include all contracts, whether private or governmental. But it is pointed out that the power to 'requisition' cannot apply to a governmental contract; and this may be conceded, since the government cannot requisition what it already has. * * * Rules of statutory construction are to be invoked as aids to the ascertainment of the meaning or application of words otherwise obscure or doubtful. They have no place, as this court has many times held, except in the domain of ambiguity. * * * They may not be used to create but only to remove doubt.

* * * The question we are called upon to answer is whether, because the words 'any * * * contract' must be given a narrower meaning when qualified by the predicate 'requisition', their meaning must be limited in like manner when qualified by one of the other three predicates. * * * But here the meaning of the words considered severally is not in doubt, and the rule is invoked not to remove an obscurity, but to import one. * * * The meaning of the several words, standing apart, being perfectly plain, what should be done is to apply them distributively, *diverso intuitu*, giving to each its natural value and appropriate scope when read in connection with the object (any contract) which they are severally meant to control."

Russell M. Co. v. *U. S.*, 261 U. S. 514, 519, 520, 521, 43 S. Ct. 428, 429, 430.

"The judicial function to be exercised in construing a statute is limited to ascertaining the intention of the Legislature therein expressed. A *casus omissus* does not justify judicial legislation."

Ebert v. *Poston*, 266 U. S. 548, 45 S. Ct. 188, 190.

"Construction may not be substituted for legislation."

U. S. v. *Mo. P. R. R.*, 278 U. S. 269, 278, 49 S. Ct. 133, 136.

"The limits of the power to establish regulations are well settled. * * * They may not extend a statute or modify its provisions."

Campbell v. *Galeno C. Co.*, 281 U. S. 599, 610.

"Such regulations become, indeed, binding rules of conduct, but they are valid only as subordinate rules and when found to be within the framework of the policy which the legislature has sufficiently defined."

Panama R. Co. v. *Ryan*, 293 U. S. 388, 428-9.

"It is invalid because not within the authority conferred by the statute upon the Director (or his successor, the Administrator) to make regulations to carry out the purposes of the Act. It is not, in the sense of the statute, a regulation at all, but legislation. * * * This is beyond administrative power. The only authority conferred, or which could be conferred by the statute, is to make regulations to carry out the purposes of the act—not to amend it."

Miller v. *U. S.*, 294 U. S. 435, 439, 440, 55 S. Ct. 440, 442.

"The argument from the legislative history undertakes, in effect, to contradict the terms of Section 8 (f) by negative inference drawn from inconclusive events occurring in the course of consideration of the various and widely differing bills which finally, by compromise and adjustment between the two Houses of Congress, emerged from the conference as the Act. The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction. This is such a case."

Gemsco v. *Walling*, 324 U. S. 244; 65 S. Ct. 605, 614-5.

The Circuit Court of Appeals' opinion in the instant case on first appeal:

> "Departmental constructions are guides, not mandates. We must always assume the responsibility for the construction of the Act, giving to it the construction which we think Congress intended, considering the language it used and the purpose it had in mind to accomplish."
>
> *Zazove* v. *U. S.*, 156 F. 2d 24, 27.

> "It is at best treacherous to find in Congressional silence alone the adoption of a controlling rule of law. We do not think under the circumstances of this legislative history that we can properly place on the shoulders of Congress the burden of the Court's own error."
>
> *Girouard* v. *U. S.*, 328 U. S. 61, 69; 66 S. Ct. 826, 830.

See concurring opinion of Mr. Justice Rutledge in *Cleveland* v. *U. S.*, 329 U. S. 14,22-4, 67 S. Ct. 13, 17, 18:

> "Notwithstanding recent tendency, the idea cannot always be accepted that Congress, by remaining silent and taking no affirmative action in repudiation, gives approval to judicial misconstruction of its enactments. See *Girouard* v. *United States*, 328 U. S.....[5], 66 S. Ct. 826.
>
> "There are vast differences between legislating by doing nothing and legislating by positive enactment, both in the processes by which the will of Congress is derived and stated and in the clarity and cer-

---

[5] • • • Legislative intent derived from nonaction or 'silence' lacks all the supporting evidences of legislation enacted pursuant to prescribed procedures, including reduction of bills to writing, committee reports, debates, and reduction to final written form, as well as voting records and executive approval. Necessarily also the intent must be derived by a form of negative inference, a process lending itself to much guesswork.

tainty of the expression of its will. And there are many reasons, other than to indicate approval of what the courts have done, why Congress may fail to take affirmative action to repudiate their misconstruction of its duly adopted laws. Among them may be the sheer pressure of other and more important business. See *Moore* v. *Cleveland R. Co.*, 6 Cir., 108 F. 2d 656, 660. At times political considerations may work to forbid taking corrective action. And in such cases, as well as others, there may be a strong and proper tendency to trust to the courts to correct their own errors, see *Girouard* v. *United States*, *supra*, 66 S. Ct. at page 830, as they ought to do when experience has confirmed or demonstrated the errors' existence.

"The danger of imputing to Congress, as a result of its failure to take positive or affirmative action through normal legislative processes, ideas entertained by the Court concerning Congress' will, is illustrated most dramatically perhaps by the vacillating and contradictory courses pursued in the long line of decisions imputing to 'the silence of Congress' varied effects in commerce clause cases. * * * That danger may be and often is equally present in others. More often than not the only safe assumption to make from Congress' inaction is simply that Congress does not intend to act at all. *Cf. United States* v. *American Trucking Ass'n*, 310 U. S. 534, 550, 60 S. Ct. 1059, 1067, 84 L. Ed. 1345. At best the contrary view can only be an inference, altogether lacking in the normal evidences of legislative intent and often subject to varying views of that intent. * * * In short, although recognizing that by silence Congress at times may be taken to acquiesce and thus approve, we should be very sure that, under all the circumstances of a given situation, it has done so before we so rule and thus at once relieve ourselves from and shift to it the burden of correcting what we have done wrongly. he matter is particular, not general, notwithstanding earlier exceptional treatment and more recent tendency. Just as dubious legislative history is at times much over-ridden, so also is silence or inaction often mistaken for legislation.

> "I doubt very much that the silence of Congress in respect to these cases, notwithstanding their multiplication and the length of time during which the silence has endured, can be taken to be the equivalent of bills approving them introduced in both houses, referred to and considered by committee, discussed in debates, enacted by majorities in both places, and approved by the executive. I doubt, in other words, that, in view of all the relevant circumstances including the unanticipated consequences of the legislation, such majorities could have been mustered in approval of the Caminetti decision at any time since it was rendered. Nor is the contrary conclusion demonstrated by Congress' refusal to take corrective action."

In *Order of Ry. Conductors* v. *Swan*, 329 U. S. 520, 529, 67 S. Ct. 405, 410, in spite of the failure to pass either of two bills seeking to correct administrative construction, it was said:

> "It does not appear whether the bills died because they were thought to be unnecessary or undesirable. • • • Under such circumstances, the failure of Congress to amend the statute is without meaning for purposes of statutory interpretation."

That might be well said of the failure of Congress to act in the matter involved in the instant suit. Congress was asked to give an option to veterans under thirty years of age and to use similar language in giving an option to those thirty years of age or older, and acquiesced in the administrative request for such options, probably without deciding whether the option was very desirable or not from the standpoint of the older beneficiaries. Congress may have thought that while such older beneficiaries would not be apt to take advantage of the option, if they desired to have as much of the insurance as possible paid as quickly as possible, yet there might be a few beneficiaries who would be more interested in getting a greater amount of interest for slower payment of principal.

Petitioner cites several cases in supposed support of its contention that the silence of Congress compels the conclusion that it approved the administrative construction, but its cases refer to approval and adoption of long and uniform administrative construction of prior statutes, when the language therein contained is enacted in another statute of later adoption. The Act involved in the instant case is an original enactment, and not a re-enactment of any former Act, unless it be considered as a re-enactment of the administrative regulation as to converted insurance under the former World War Veterans Act, which fixed the amount of the monthly benefits under the 120 installment option at the higher rate we are contending for, save for a slight adjustment because of difference in interest rate. As said by the court below: "Silence must be so compelling as to lead to no other reasonable construction before we are justified in holding that Congress approved an invalid regulation by mere silence." *Zazove* v. *U. S.*, 162 F. 2d 443.

Petitioner argues in his brief that weight should be given to the construction given by the administrative agency in whose province the Act falls, and cites numerous cases in supposed support of that principle. These cases, however, had to do with administrative construction uniformly followed over a long period of years and not to new construction as in the case at bar which had continued but a few years and hardly long enough for a court contest with respect thereto to have been concluded.

Jones v. *Lib. G. Co.*, ... U. S. ....., 68 S. Ct. 229, 234.

Under the World War Veterans' Act. 1924, as amended, converted insurance was payable in 240 monthly installments, including interest at 3½% per annum, unless the insured designated one of the options which provided for payment in a smaller number of installments. Under this option he was permitted to provide that the insur-

ance should be payable in 120 monthly installments. In that event, for each $1,000 face value of insurance, it was determined how much interest would be earned on the monthly balance of the $1,000 if the principal and interest were paid off in 120 equal monthly installments, and that total amount was determined to be $9.83 per month, or $1,179.60 for the 120 months. Therefore, $1,000 of this was principal and $179.60 was interest.

Tit. 38, Code of Fed. Reg., § 10. 3068 (2).

The same computation ought to be applicable under the National Service Life Insurance Act, except the rate of interest thereunder is 3% instead of 3½%. Therefore, the amount of interest should be 6/7 of the $178.60 only, or $153.94. Adding this to the principal of $1,000 would make a total of $1,153.94. Dividing this into 120 equal monthly installments would make each installment $9.616, and multiplying this by 5, because $5,000 is the amount of insurance involved in the instant suit, would make the monthly installments due plaintiff $48.08, instead of $29.50, which the present regulation gives to a beneficiary aged 54.

§ 10.3450, Tit. 38, Code of Fed. Reg. (R. 5).

To arrive at this reduced figure, the Veterans' Administration engages in mental gymnastics wholly unwarranted by the Act of Congress and wholly devoid of common sense. Congress said (Tit. 38, § 802 (h) (2), USCA, 694) that if the beneficiary is 30 or more years of age at maturity, the insurance shall be payable in equal monthly installments for 120 months certain, with such payments continuing during the remainder of the lifetime of such beneficiary. That certainly meant that the beneficiary should get the same amount (save for the ½% reduction in the interest rate) as a beneficiary whose insurance was paid in 120 months under the old law, and not as the

Veterans' Administration figures it, that you should determine the life expectancy of the beneficiary and then make each monthly installment sufficient to pay the beneficiary the principal and interest only if the actual lifetime of that beneficiary coincides exactly with his or her life expectancy. If the latter were the proper construction of the statute, it would be utterly nonsensical to provide that the face of the policy and interest should be paid in equal monthly installments for 120 months certain, with such payments continuing, etc., thereby evidencing an intent that the beneficiaries in the older class should receive larger installments than those in the younger class. If the beneficiary had a life expectancy of 20 years and actually lived only 10, only one-half the insurance would be paid to anybody. If Congress had intended such a result it would have so indicated in appropriate language. It would have said that the insurance should be payable in equally monthly installments during the life expectancy of the beneficiary, provided that if the beneficiary died before receiving 120 monthly installments, the balance of the 120 installments should be payable to the substituted beneficiary, and if the designated beneficiary lived beyond the said life expectancy the installments should continue to be paid during the actual lifetime of the beneficiary. As Congress did not so provide, it was beyond the power of the Veterans' Administration to alter the Act of Congress by administrative regulation.

As said in the opinion below, sub-section 2 of the Act of Congress (38 USCA, Sec. 802 (h) (2)) seems to be plain and unambiguous and means what it says in stating that the face value of the insurance, plus interest, is to be paid in 120 equal monthly installments. Nothing is said in the statute about equalizing the sum over the life expectancy of the beneficiary. The regulation does

that, and thereby sets up a formula different from that prescribed by Congress. While the Veterans' Administration may by regulation carry out the provisions prescribed by Congress yet it may not alter those provisions. Even the Congress itself could not do that with respect to the contract obligation of the Government to the beneficiary.

In *Lynch* v. *U. S., and Wilner* v. *U. S.*, decided in the combined opinion 292 U. S. 571, 578, 580, the author of this brief obtained a decision of the Supreme Court to that effect: (p. 578) "But no power to curtail the amount of the benefits which Congress contracted to pay was reserved to Congress; and none could be given by any regulation promulgated by the Administrator * * *. Rights against the United States arising out of a contract with it are protected by the Fifth Amendment * * *. When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals," and (p. 580) "But Congress was without power to reduce expenditures by abrogating contractual obligations of the United States. To abrogate contracts, in the attempt to lessen government expenditure, would be not the practice of economy, but an act of repudiation. 'The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen.'"

In the face of this it is sought to justify an administrative regulation lessening the amount of benefits provided in the Act of Congress which was incorporated in the contract between the United States and the deceased soldier. That Act and contract provided that insurance

benefits should be paid to beneficiaries thirty years of age or older, sufficient to pay the face of the insurance and interest within ten years and that the monthly benefits should continue at the same rate throughout the lifetime of the first beneficiary, but the administrative official undertook by regulation to say that such beneficiaries should not receive that amount of money, but should receive a much smaller amount, based upon their life expectancies. In this connection, counsel state that the amount of monthly installments was not specified in the Act. If not specified in dollars and cents, because familiar language in other acts was used, it was specified that the face of the policy and interest should be paid out in 120 monthly installments. In order to twist the Act around so as to bring the regulation in accord with it, counsel seek to find a hidden meaning in the provision in Section 602(a) of the National Service Life Insurance Act, where, after specifying that the premium rates shall be based upon the American Experience Table of Mortality, it is also provided that all cash, loan, paid up and extended values and all other calculations in connection with such insurance, shall be based upon said Table and interest at 3%. Keeping in mind the well known rule of *ejusdem generis*, "all other calculations in connection with such insurance" would refer to matters of the same class as those preceding the words in question, and would not refer to benefits, as the preceding words referred only to premiums and the various matters having to do with converted insurance only. It is a distortion of the congressional intent to construe those words, as counsel seek to do, to require smaller monthly payments to the older beneficiaries than to the younger.

> "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression or an

absurd consequence. It will always, therefore, be presumed that the Legislature intended exceptions to its language, which would avoid results of this character. The reason of the law, in such cases, should prevail over its letter."

U. S. v. *Kirby*, 74 U. S. (7 Wall.) 482, 19 L. Ed. 278, 280.

"If it be true that it is the duty of the court to ascertain the meaning of the Legislature from the words used in the statute and the subject-matter to which it relates, there is an equal duty to restrict the meaning of general words, whenever it is found necessary to do so, in order to carry out the legislative intention.

* * * "And it is fair to presume, in case a special meaning was attached to certain words in a prior tariff Act, that Congress intended they should have the same signification when used in a subsequent Act in relation to the same subject-matter."

Reiche v. *Smythe*, 80 U. S. (13 Wall.) 162, 20 L. Ed. 566.

We do not believe petitioner should be allowed to twist the plain meaning of Congress into something entirely different. An appropriate answer to the labored and confusing misconstruction argued and re-argued time and time again in petitioner's brief, on which Regulation 3450 is based, is to be found in the following:

"The plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover."

Old C. R. Co. v. *Commissioner*, 284 U. S. 552, 560, 52 S. Ct. 211, 213.

The fallacy in the argument attributing congressional approval of the unauthorized administrative construction

is apparent by mere reference to the calendar. Congress originally enacted the National Service Life Insurance Act in 1940. The insured in the instant case died May 12, 1943, and the policy then matured and respondent's rights became vested. It was after that, September 30, 1944, and again August 1, 1946, that other Congresses by their enactments gave to certain beneficiaries additional options, without, however, attempting to abrogate rights already vested under the original Act. Those options cannot change those vested rights, nor change or qualify the intent of the Congress which granted them, and all that is said in petitioner's brief in regard to those amendments is beside the point in the construction of the original Act.

Petitioner's contention that the rate of payment that we are contending for in the case of beneficiaries thirty years of age or over is unwise, is a contention that should be addressed to Congress, and is not a matter with which the courts are concerned. The same argument in only slightly lesser degree would apply to payments to veterans of World War I who remained totally and permanently disabled beyond the specified 240 months. The argument that there is no apparent reason for larger monthly payments to older beneficiaries is baseless. As is well known, most of the soldiers' beneficiaries are women relatives, and Congress may have thought that older beneficiaries would be much more apt to need larger monthly payments than the younger ones. For instance, the older beneficiaries would be much less apt to secure adequate support from their own efforts. Their age would be a great handicap in fitting themselves for many occupations, such as stenographic work, teaching, operatic roles, movie actresses, doctors, dentists, nurses, etc., to say nothing of

being less likely to better their position through marriage.

Petitioner's construction assumes, necessarily, that Congress intended that the younger class of beneficiaries, who, in the nature of things, would need less each month, should receive more,—in most cases almost double,—than the older class of beneficiaries, who would need more, because of their greater age, with increasing ills and incapacity and decreasing earning power and opportunity for improving their financial situation.

Moreover, the Congress, in enacting the provision in question, used familiar language in providing for payments for a fixed number of years or months, to continue thereafter at the same rate for life, for the original war risk insurance was payable in monthly installments sufficient to exhaust the face of the insurance and interest in a definite time, 240 months, but in the case of totally and permanently disabled veterans that insurance continued at the same rate after the 240 months, during the totally permanent disability of the veteran. It is extremely unlikely that any considerable number of members of the Congress which enacted the National Service Life Insurance Act could be found who believed that in passing it they were giving the older beneficiaries less than the younger ones.

The alleged difficulty of the Administrator in setting aside reserve amounts to meet liabilities is another question of the wisdom of the statute which falls within the province of Congress, and not of the courts. Very likely Congress thought that if the reserve set up proved to be insufficient, the matter could be remedied by deficiency appropriations or by increase in the regular appropriations.

Although it is a matter beyond the province of the court, petitioner seeks to prevail by "scare" tactics and use of such words as "astronomical amount", and resorts to the improper practice of writing a letter to itself and answering its own letter and publishing that answer in the appendix to its petition. Although the dire results predicted will not follow, as we will show presently, this quoting of correspondence is improper for consideration.

The author of this brief raised the same point in this court in *U. S.* v. *Am. N. B. & T. Co.*, No. 1038, October Term, 1941, 316 U. S. 674, in which the government's petition for *certiorari* was denied. What we there said is applicable here. No such claim was made in the District Court and that court did not pass upon any such question. If such letters are to be considered by the Supreme Court on *certiorari*, that court must then disregard the Constitutional distinctions (Cl. 2, Sec. 2, Article III, USCA, pp. 476-7) between its original and appellate jurisdiction and assume original jurisdiction in this case to decide a question not presented to the District Court and without opportunity to respondent to contest that question on the facts. A very similar question arose in Illinois under a provision of its new Practice Act (Ill. R. S. 1939, Chap. 110, par. 216, Chap. 110, Sec. 216 Smith-H. Ill. Annot. Stat., pp. 419-20) giving litigants the right to make amendments and offer evidence in courts of review which had not been made or offered in the trial court and the Illinois Supreme Court in *Schmidt* v. *Eq. L. A. Soc.*, 376 Ill. 183, 197-8, decided that such a practice would involve the exercise of original jurisdiction by the court of review and would be in violation of the Constitution. Sec. 2, Article VI, Illinois Constitution, provides in part: "The supreme court * * * shall have original jurisdiction in cases relating to the revenue, in mandamus and *habeas corpus*, and appellate

jurisdiction in all other cases." *Smith-H. Ill. Annot. Stat.*, p. 178. There is no such provision in the Rules of Civil Procedure and so we must resort to the state decision. In line with the same principle it has been decided that even Congress cannot give the Supreme Court original jurisdiction beyond that given in the Constitution.

Ex p. Vallandingham, 1 Wall. (68 U. S.) 243, 252, 17 L. Ed. 589.

Marbury v. *Madison*, 1 Cranch (5 U. S.) 137, 174-6.

F. R. C. v. *Gen. E. Co.*, 281 U. S. 464, 469, 74 L. Ed. 969.

Ignoring the fact that the insurance in question is for a five year term only, much of which has already run, at the expiration of which time it must be converted into other standard forms which do not contain the continuing liability for life of the beneficiary so objected to, petitioner in its argument and the letter in question claims that if the decision now under review would be affirmed government expenditures for insurance benefits to the older class of beneficiaries would increase by many billions, or, to use petitioner's words, to an "astronomical amount". It seems to make a difference whether our billions should be given away abroad or be given away in any amount whatever where they would benefit our own deserving citizens and by expenditures in this country increase prosperity. Perhaps this was one consideration that Congress had in mind among the many mentioned in the opinion below in providing generously for the older class of beneficiaries.

Petitioner cites (Bf. 44-5) *Pine Hill Coal Co.* v. *U. S.*, 259 U. S. 191, 196, in supposed support of the theory

that our construction should be rejected because of the expense to the government. However, the case so cited was concerned, not with the amount involved in an admitted liability, but with whether any liability at all was imposed. From the general language of that case, applied as it was to an entirely different situation, it is sought to establish a rule which would require, in construing what petitioner's brief (pp. 23, 24) asserts to be uncertain language in the Act, the choice of the construction which would impose the smallest expense upon the United States. This, however, ignores the decision in *Lynch* v. *U. S.*, 292 U. S. 571, 579, 54 S. Ct. 840, 843, which we have hereinbefore quoted from, that government insurance contracts are the same as such contracts between private parties. As is thoroughly established in insurance law, any doubt or uncertainty in insurance contracts is to be resolved against the insurer as the latter chose the language without consultation with the insured, who had to take the contract as prepared by the insurer or not at all.

Aschenbrenner v. *U. S. F. & G. Co.*, 292 U. S. 80, 84-6, 54 S. Ct. 590, 592-3.

Strochmann v. *M. L. I. Co.*, 300 U. S. 435, 439-40, 57 S. Ct. 607, 609.

M. L. I. Co. v. *Hurni P. Co.*, 263 U. S. 167, 174-6. 44 S. Ct. 90, 91.

However, it is apparent that those who prepared the "astronomical" figures for the Administrator of Veterans' Affairs have over-stated the figure that could have been shown if an attempt had been made to prove those figures in the District Court. It is common knowledge that not long ago the Veterans' Administration was claiming a large surplus had been accumulated through its having over-estimated the amount of insurance premiums re-

quired and was seeking some way to return this surplus to its source.

If we compare continuing installments under World War I insurance with the similar ones under National Service Life Insurance we will find no insuperable increase. For instance, insured veterans of World War I were to be paid in insurance benefits so that they would receive the face of their policies with interest in 240 monthly installments, or in 20 years, and continuing thereafter as long as they should remain totally and permanently disabled. Therefore, if a World War I soldier became totally and permanently disabled at 18, a very frequent age, and so remained until 58, he would receive his $10,000 twice over, or $20,000 and interest, instead of $10,000 and interest. On the other hand, if a World War II beneficiary was 30 when her insurance matured and lived to be 58 she would receive $28,000, or only $8,000 and interest on her $10,000 in addition to what the totally and permanently disabled World War I veteran would receive. There does not seem to be occasion for any panic in this.

It seems to us utterly fallacious to construe the Acts of Congress as contended for by us as authorizing the payment of more than $10,000 of insurance to any one person. The same provision has been upheld in original war risk insurance, whereby totally and permanently disabled veterans might collect the face of the policy and interest several times over if they remained totally and permanently disabled long enough without amounting to more than $10,000 of insurance, regardless of what may eventually be paid thein. As well might it be argued that because interest is paid on the face of the policy, that constitutes more than $10,000 of insurance. What difference does it make anyhow? The $10,000 limitation

is statutory only and might lawfully be increased by statutory amendment or exception.

We believe the judgment under review should be affirmed.

Respectfully submitted,

EDWARD H. S. MARTIN,
JOHN B. KING,
Attorneys for Respondent.

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SUPREME COURT OF THE UNITED STATES

No. 432.—October Term, 1947.

The United States of America, Petitioner, v. Tillie Zazove.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[June 14, 1948.]

Mr. Chief Justice Vinson delivered the opinion of the Court.

We are called upon in this case to determine whether Regulation 3450 of the Veterans' Administration [1] is in accord with a proper construction of § 602 (h) (2) of the National Service Life Insurance Act of 1940.[2]

Respondent, Tillie Zazove, was designated beneficiary in a $5,000 contract of National Service Life Insurance. The insured died in 1943, and the named beneficiary filed her claim for the insurance in the Veterans' Administration. Upon denial of the claim, suit was instituted in the District Court for the Northern District of Illinois.[3] The District Court ruled, on its view of the facts, that Mrs. Zazove did not stand *in loco parentis* to the soldier and hence was not one of the persons who could be made a beneficiary as provided by the statute.[4] On appeal, the Circuit Court of Appeals for the Seventh Circuit ruled to the contrary and remanded for further proceedings. 156 F. 2d 24.

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[1] 6 Fed. Reg. 1162, 1166, 38 C. F. R. 1941 Supp. § 10.3450.

[2] Part I, Title VI of the Second Revenue Act of 1940, Act of Oct. 8, 1940, c. 757, 54 Stat. 974, 1008, 38 U. S. C. §§ 801, 802 (h) (2).

[3] Pursuant to § 617 of the Act, 38 U. S. C. § 817.

[4] § 602 (g), 38 U. S. C. § 802 (g).

The issue remaining for determination by the District Court upon remand was the validity of Regulation 3450. It sustained the regulation as properly issued pursuant to the National Service Life Insurance Act. On a second appeal, the Circuit Court of Appeals, one judge dissenting, reversed. We granted certiorari to review the important question of statutory construction involved.

The basic statutory provision involved is § 602 (h) of the National Service Life Insurance Act of 1940, which provides that insurance issued under the Act "shall be payable in the following manner:

> "(1) If the beneficiary to whom payment is first made is under thirty years of age at the time of maturity, in two hundred and forty equal monthly installments.
>
> "(2) If the beneficiary to whom payment is first made is thirty or more years of age at the time of maturity, in equal monthly installments for one hundred and twenty months certain, with such payments continuing during the remaining lifetime of such beneficiary."

The Administrator, acting under the general rule-making power given him by the Act,[5] promulgated Regulation 3450 (set forth in the margin)[6] shortly after the enactment

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[5] Sec. 608, 38 U. S. C. § 808: "The Administrator, subject to the general direction of the President, shall administer, execute, and enforce the provisions of this chapter, shall have power to make such rules and regulations, not inconsistent with the provisions of this chapter, as are necessary or appropriate to carry out its purposes, and shall decide all questions arising hereunder. . . ."

[6] "*Payment to first beneficiary.*—Upon due proof of the death of the insured while a National Service Life Insurance policy is in force, the monthly installments, without interest, which have accrued since the death of the insured (the first installment being due on the date of death of the insured) and the monthly installments which thereafter become payable in accordance with the provisions of the

of the statute, to put § 602 (h) into operation. The regulation provides, for beneficiaries covered by clause (1), that "payment shall be made in 240 equal monthly installments at the rate of $5.51 for each $1,000 of such insurance." The amount of the monthly installment is so

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policy, shall be paid to the beneficiary or beneficiaries entitled in the following manner:

"(a) If the beneficiary to whom payment is first made is under thirty years of age at the time of the death of the insured, payment shall be made in 240 equal monthly installments at the rate of $5.51 for each $1,000 of such insurance.

"(b) If the beneficiary to whom payment is first made is thirty or more years of age at the time of the death of the insured, payment shall be made in equal monthly installments for 120 months certain, with such payment continuing throughout the remaining lifetime of such beneficiary. The amount of the monthly installment for each $1,000 of insurance shall be determined by the age of the beneficiary as of last birthday at the time of the death of the insured, in accordance with the following schedule based upon the American Experience Table of Mortality and interest at the rate of 3 per centum per annum:

"Age of beneficiary at date of death of insured	*Amount of each monthly installment*
30	$3.97
40	4.50
50	5.39
54	5.90
60	6.81
68	8.19
70	8.51
80	9.55

"

calculated that the sum of the 240 installments equals the face value of the insurance plus 3% interest per annum.

It is the provision made by the regulation for first beneficiaries covered by clause (2) that is in issue, since the first beneficiary in this case, Mrs. Zazove, was more than thirty years old when the policy matured. For such beneficiaries, who are to receive payments for life with 120 payments certain, the regulation provides that the "amount of the monthly installment for each $1,000 of insurance shall be determined by the age of the beneficiary as of last birthday at the time of the death of the insured, in accordance with a schedule based upon the American Experience Table of Mortality and interest at the rate of 3 percentum per annum. . . ." Accordingly, the size of the monthly installment varies not merely with the face value of the insurance policy but also with the age of the first beneficiary, the latter factor being used as the basis of an actuarial computation whereby the face value of the policy plus interest is equalized over the life expectancy of the beneficiary. Under this interpretation of § 602 (h) (2), the respondent, who was 54 years of age at the death of the insured, is entitled to monthly installments of $29.50, at the rate of $5.90 for each $1,000 of insurance in which she had a beneficial interest. These installments are to be paid for 120 months certain,[1] and to continue during her remaining lifetime if she lives beyond that 10-year period.

In reversing the District Court, the Circuit Court of Appeals held this method of calculation set forth by Regu-

[1] If the first beneficiary fails to survive the 10-year period, after having received at least one installment, "thereafter monthly installments in the same amount shall be paid to the person or persons entitled as beneficiary until all of the installments certain shall have been paid." Regulation 3451, 6 Fed. Reg. 1162, 1166, 38 C. F. R. Cum. Supp. § 10.3451.

lation 3450 to be inconsistent with the provisions of § 602 (h) (2). It construed the latter provisions, in accord with the respondent's contention, as plainly requiring that the total of the equal monthly installments payable over a period of 120 months certain should equal the face value of the insurance, plus interest. Under this construction, Mrs. Zazove is entitled to receive $48.08, instead of $29.50, as her monthly installment, so that the total of the 120 payments certain will amount to $5,000 (plus interest), instead of $3,450 (plus interest) as determined by the Veterans' Administration, with the monthly installments due her if she survives the period of guaranteed payments continuing at the same rate. Taking into account Mrs. Zazove's life expectancy as estimated by the American Experience Table of Mortality, the actual cash value of this $5,000 insurance policy at the time of the insured's death would amount to $8,145 under respondent's construction, instead of $5,000 as determined by the regulation.[*]

In arriving at its decision, the majority of the Circuit Court of Appeals reasoned that the terms of § 602 (h) (2) are clear and unambiguous; that nothing is said in the statute about equalizing the sum over the life expectancy of the beneficiary; and that Congress unmistakably prescribed payment of the face value plus interest in equal monthly installments over a period of 120 months certain. The major difficulty with this reasoning lies in the inadequate consideration that it gives to the full extent of the payment provided by § 602 (h) (2). In effect, the Circuit Court of Appeals majority stopped short, in its reading of the terms for payment of the insurance in that subsection, at the end of the phrase "in equal monthly installments for one hundred and twenty months certain." By stopping short at that phrase, the court failed to consider

[*] See table, *infra* note 18.

the alternative possibility that Congress intended the immediately following phrase, "with such payments continuing during the remaining lifetime of such beneficiary," to provide an additional and equally essential component of the statutory equivalent for the face value of the insurance. Assuming that this alternative construction of the section is in fact what Congress intended, the only proper interpretative regulation would be one that computed the value of the monthly installments payable to any given first beneficiary in such a manner that the value of the payments to be made, giving due weight to the beneficiary's life expectancy at the death of the insured, would be equivalent to the face value of the policy, plus 3% interest. Regulation 3450 is based on that assumption. It was only because the Circuit Court of Appeals failed to regard the continuing payability of monthly installments, after the payment of the 120 installments certain, as possibly constituting a significant component of the insurance for which the serviceman had contracted, rather than a sheer gratuity conferred by Congress, that the court could view the subsection as plainly and without ambiguity requiring the face value of the insurance to be paid by the end of the 120 months certain.

Moreover, the very presence of the term "certain" in the phrase "equal monthly installments for one hundred and twenty months certain" suggests a view contrary to that reached by the court below. It will be noted that when Congress had in mind, as it clearly did in the case of § 602 (h) (1), that a fixed number of installments provided for should equal the face value of the insurance, there was no occasion for the use of "certain" in describing the installments to be made and, indeed, the term is not found in § 602 (h) (1). While the inclusion of the term in describing the fixed number of installments to be paid under § 602 (h) (2) might conceivably be a mere superfluity, its presence at least suggests the far greater prob-

ability that it was used in the specialized, technical sense in which it is generally employed in the insurance field, namely, to indicate a guaranty that a designated number of monthly payments shall be forthcoming, where a policy provides an option for equal monthly installments continuing throughout the lifetime of a payee, with the individual installment varying in amount depending on the age of the beneficiary when the policy matures.[9]

Hence, in our view, a reading of § 602 (h) (2) in its entirety suffices to demonstrate that the language there used by Congress is far from being so clear and so free from ambiguity as to preclude the construction adopted by the Veterans' Administration in Regulation 3450. To this extent, we believe the reasoning of the Circuit Court of Appeals was in error. But that alone would not necessarily invalidate its holding since, as the Government appears to concede, the terms of § 602 (h) (2) are not unambiguously in accord with the regulation. Indeed, if the ambiguity inherent in § 602 (h) (2) were found in the terms of an ordinary commercial insurance policy, there might well be substantial ground for construing it in favor of the insured.[10]

There is, of course, a marked distinction between the criteria for judicial construction of an ordinary commercial insurance contract, and construction of the provisions of an act of Congress setting up a system of national life insurance for servicemen to be administered by a governmental agency. The statutory provisions, where ambiguous, are to be construed liberally to effectuate the beneficial purposes that Congress had in mind. In this respect, judicial construction of the statute may appear

[9] See examples, in the text *infra*, of standard usage of this term in commercial insurance policies.

[10] See *Aschenbrenner* v. *United States Fidelity & Guaranty Co.*, 292 U. S. 80, 84 *et seq.* (1934); *Manufacturers' Accident Indemnity Co.* v. *Dorgan*, 58 F. 945, 956 (1893).

similar to construction of a commercial policy, where ambiguous provisions are generally construed in favor of the insured. In the latter case, construction favorable to the insured rests on the theory that "The phraseology of contracts of insurance is that chosen by the insurer and the contract in fixed form is tendered to the prospective policy holder who is often without technical training, and who rarely accepts it with a lawyer at his elbow. So if its language is reasonably open to two constructions, that more favorable to the insured will be adopted . . . and unless it is obvious that the words are intended to be used in their technical connotation they will be given the meaning that common speech imports. . . ."[11] But the statute is an expression of legislative intent rather than the embodiment of an agreement between Congress and the insured person. Only the intent of Congress, which in this case is the insurer, need be ascertained to fix the meaning of the statutory terms; the layman understanding of the policy holder does not have the relevance here that it has in the construction of a commercial contract.[12]

On the other hand, we think it clear that an administrative regulation purporting to construe an ambiguous subsection of the National Life Insurance Act of 1940 is not automatically to be deemed valid merely because not plainly interdicted by the terms of the particular provision construed. The Administrator's general rule-making power, which was exercised in issuing Regulation 3450, is limited by the statute to "such rules and regulations, not inconsistent with the provisions of this chapter, as are

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[11] *Aschenbrenner* v. *United States Fidelity & Guaranty Co.*, *supra* note 10, at 84–85.

[12] This is not, of course, to deny that the statute and regulations adopted pursuant to it give rise to an obligation that has the force of a binding contract with the serviceman insured. See *Lynch* v. *United States*, 292 U. S. 571, 579 (1934).

necessary or appropriate to carry out its purposes . . . ." [13]
Moreover, a 1946 amendment to § 608, designed to eliminate the finality of the decisions of the Administrator on insurance matters,[14] amended the last sentence of § 608 to add the words set out in italics:

> "Except in the event of suit as provided in section 617 hereof, *or other appropriate court proceedings*, all decisions rendered by the Administrator under the provisions of this Act, or regulations *properly* issued pursuant thereto, shall be final and conclusive on all questions of law or fact, and no other official of the United States, *except a judge or judges of United States courts*, shall have jurisdiction to review any such decisions."

The extension of procedures available to secure judicial review, the interpolation of the word "properly," and the addition, presumably out of an abundance of caution, of the tautological phrase "except a judge or judges of United States courts" are indicative of congressional concern that the regulations of the Veterans' Administration be subject to more than casual judicial scrutiny when they are based upon a controverted construction of the statute.

Accordingly, § 602 (h) (2) must be read in the full context of related sections of the statute and other indicia of legislative intent before we can adequately determine whether the regulation is "not inconsistent" with the provisions of the Act and whether it is "necessary or appropriate to carry out its purposes." We turn therefore from narrow, semantic considerations to a broader context in which the intent of Congress can be more readily comprehended.

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[13] § 608, 38 U. S. C. § 808, quoted in part *supra*, note 6.

[14] S. Rep. No. 1705, 79th Cong., 2d Sess. 9; H. R. Rep. No. 2002, 79th Cong., 2d Sess. 10; § 12 of the 1946 amendment, 60 Stat. 781, 788, amending § 608.

The proper meaning of § 602 (h) (2) becomes apparent when the respective assumptions and consequences of each of the two alternative interpretations before us are tested against the legislative history and the statute viewed in its entirety. The construction adopted by the Circuit Court of Appeals would result in conferring a far greater return to beneficiaries in the group covered by § 602 (h) (2), *i. e.*, over thirty at the time of the insured's death, than the return to which first beneficiaries covered by § 602 (h) (1), *i. e.*, under thirty at the insured's death, are entitled. It is unquestioned that the latter group, under the original statutory provisions,[15] were entitled only to 240 monthly installments (*i. e.*, over a 20-year period) which in the aggregate equal the face value plus interest, with no further installments payable thereafter, whether or not the payee survived that limited period. But, under the ruling of the Circuit Court of Appeals, payments in many if not most of the cases involving the former group of beneficiaries would exceed the face value of the policy since any first beneficiary who survived the 10-year period of § 602 (h) (2) would automatically secure more than that amount. In fact, the actual value of a policy, at maturity, to a 30-year old beneficiary, under this ruling, would be almost two and a half times its face amount,[16] whereas the 29-year old beneficiary, paid in accordance with § 602 (h) (1) (whose interpretation is not open to question), could never receive more than the face amount, plus interest. And the aggregate of guaranteed and continuing payments made at so high a rate

[15] The statute was amended in 1946 to make all future beneficiaries, regardless of age, eligible for the life annuity with 120 guaranteed payments previously limited to those over thirty. § 9 of the 1946 amendment, 60 Stat. 781, 785, adding § t (d) to § 602 of the 1940 Act.

[16] See table, *infra* note 18.

under § 602 (h) (2) would necessarily greatly exceed the total face value of the policies issued under the statute.[17]

This sharp disparity between the two different groups of beneficiaries does not result under the regulation, since

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[17] *Ibid.*

As mentioned in note 15 *supra*, the life annuity with 120 guaranteed payments was made available in 1946 to all beneficiaries regardless of age. Acceptance of respondent's interpretation would require us to view Congress as having offered, in the 1946 amendment, four optional settlements (see note 36 *infra*), three of which would be limited in value at maturity to the face amount of the insurance, while the fourth option would offer a value far in excess of the face amount and would be available to all beneficiaries without regard to their age at the insured's death.

By the calculations of the American Experience Table, a person has to be 68 years old before his life expectancy is less than 10 years. Accordingly, in all cases where the first beneficiary is under 68 years of age at the time the insured dies, the actual value of the policy, thus computed, would exceed its face amount. The Administrator estimates that, on the approximately 2.1 billion dollars of death claims already incurred and now being settled under the provision for life income with installments guaranteed for 120 months, the additional liability that would result if settlement were required to be made pursuant to the Circuit Court's holding would amount to approximately 1.8 billion dollars. Government's brief, p. 67. Potential liability on the billions of dollars of insurance now in force and yet to mature would similarly be vastly increased under this view.

The precise size of the latter liability is of course problematical. In a letter to the Solicitor General, dated October 24, 1947, the Veterans' Administration estimated the amount of insurance in force and not yet matured at 35 billion dollars. Assuming that all of that insurance would be held to mature at death and that the typical beneficiary would be a woman aged 30 at the death of her husband, and that all policies would be settled under the life income option with installments guaranteed for 120 months, the Administrator estimated that potential liability under respondent's view of the statute might be about 97 billion dollars, instead of 35 billion dollars (the potential liability under Regulation 3450)—an increased

the age of the first beneficiary is used by the regulation as the basis of an actuarial calculation pursuant to a formula whereby total payments under § 602 (h) (2) approximate the face value of the policies, plus interest. The extent of the difference in result is indicated by the table, set forth in the margin,[18] of comparative present values of the monthly installments under the regulation and under the view of the Circuit Court of Appeals, taking into account the beneficiary's life expectancy as shown by the American Experience Table of Mortality.

The Circuit Court thought it probable that Congress originally intended the higher rate of benefit payments to be restricted to the beneficiaries covered by § 602 (h) (2) because that group of persons over 30 at the time of the serviceman's death would include parents, who would be at least middle-aged, and "young widows with small children whose ten years of monthly payments would end at

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future liability of 62 billion dollars. And if 10% of all lapsed policies were reinstated, the potential additional liability (on the basis of the above assumptions) would be about 19.7 billion dollars.

While these assumptions may be overly favorable to the Government's contentions and may not be fully borne out by the course of future events, it is obvious—even allowing for a wide margin of error—that the added potential liability under the holding of the Circuit Court of Appeals might well amount to billions of dollars.

[18]

Beneficiary's age	*Present value under Regulation 3450*	*Present value under C. C. A. 7 view*
10	$1,000	$2,786
20	1,000	2,633
30	1,000	2,421
40	1,000	2,136
50	1,000	1,783
54	1,000	1,629
60	1,000	1,411
70	1,000	1,129

See Appendix D of the Government's brief for the mathematical formulae used in constructing this table.

the most needed time."[19] This would hardly serve to explain, however, why Congress would intentionally discriminate in so substantial a manner against a similarly deserving but slightly younger widow in the under-thirty category by failing to extend comparable benefits to the latter group.

The disparity in benefits available under the respondent's view, as contrasted with those available under the regulation, is reflected in a correspondingly large increase, under the former view, in the total liability for beneficial payments.[20] This greatly enhanced liability could be met, theoretically, in either of two ways: by special congressional appropriations, or by greatly increased premium rates substantially above those which are now set by the Veterans' Administration on the assumption that the regulation is proper.

The Circuit Court of Appeals was of the opinion that Congress intended the Government to bear the burden of this extraordinary liability. By express provisions in the 1940 Act, Congress specified that the United States would bear the administrative costs of the insurance system,[21] excess mortality and disability cost resulting from the extra hazards of war,[22] and the cost of reimbursing the reserve fund for waiving recovery of benefit payments erroneously made where it would be inequitable to require repayment.[23] Congress obviously contemplated that the

[19] Transcript of Record, p. 10.

[20] Under the respondent's view, this extraordinary putative liability must be considered to have been tremendously increased by the extension of the § 602 (h) (2) method of payment to all beneficiaries by the 1946 amendment which removed the limiting age factor. See note 15 *supra*.

[21] § 606, 38 U. S. C. § 806.

[22] § 607 (a), 38 U. S. C. § 807 (a).

[23] § 609, 38 U. S. C. § 809. Subsequent amendments to the 1940 Act added other specified costs to be borne by the United States. See, *e. g.*, 38 U. S. C. Supp. V, § 802 *et seq.*

reserve fund to meet the liabilities of National Service Life Insurance policies was to be self-supporting, sustained by the premiums paid and by the yield of premiums invested, in all respects aside from those exceptional situations where the statute specifically designated that the Government would bear the financial burden. Yet Congress nowhere specified that the United States would bear the huge cost of the enhanced liability that it would necessarily have anticipated had it impressed upon § 602 (h) (2) the meaning that respondent finds there; and that striking omission is persuasive, in the absence of cogent considerations to the contrary, that no generosity of this magnitude was contemplated.[24]

Nor can it be assumed that Congress envisaged the setting of premium rates high enough to meet an added liability of such proportions. Senator Harrison, who was in charge of the original bill, informed the Senate that "Premium rates based on the average age—25 years—will be 67 cents per thousand per months." [25] Such a rate, though adequate to cover payments under Regulation 3450, would be completely inadequate under the respondent's construction.

Moreover, whatever ambiguity exists in the language of § 602 (h) (2) is dispelled by a consideration of the practice in effect under United States Government Life Insurance, established for World War I veterans, and the long-established practice of commercial insurance companies, viewed as part of the background of experience

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[24] *Cf.* the reasoning of the Court, speaking through Mr. Justice Holmes, in *Pine Hill Coal Co.* v. *United States*, 259 U. S. 191, 196 (1922): "A liability in any case is not to be imposed upon a government without clear words. . . . and where, as here, the liability would mount to great sums, only the plainest language could warrant a court in taking it to be imposed. . . ."

[25] 86 Cong. Rec. 12920 (1940).

which the draftsmen of § 602 (h) (2) may be assumed to have had in mind.

The World War Veterans Act, 1924,[26] provided for payment of insurance benefits in 240 equal monthly installments, but authorized the Veterans' Administration (formerly the Veterans' Bureau) to provide in the contract of insurance "for optional settlements, to be selected by the insured, whereby such insurance may be made payable either in one sum or in installments for thirty-six months or more: . . ." One of the options, set up by Regulation 3068 under this statutory authorization, provided that monthly installments in amounts designated in an appended table—the amounts being graduated, just as in Regulation 3450, with the "age of beneficiary at time of death of the insured"—"will be payable throughout the lifetime of the designated beneficiary, but if such designated beneficiary dies before 240 such installments have been paid, the remaining unpaid monthly installments will be payable in accordance with the beneficiary provision of the policy." [27]

It seems apparent to us that the congressional draftsmen, in framing § 602 (h) (2), were undoubtedly striving to incorporate into the 1940 Act a provision modeled on the life-annuity-with-240-payments-certain option set up by Regulation 3068 under the World War Veterans Act of 1924, deviating materially only in the number of payments guaranteed. True, § 602 (h) (2) does not itself define expressly the method of computation to be used by the Administrator in determining the size of the monthly installments in any given case. But, taking into account the factors previously set forth and considering them against the background of experience under

[26] Title III, 43 Stat. 607, 624, as amended, 38 U. S. C. § 512.
[27] 38 C. F. R. 10.3068.

the 1924 Act, the only reasonable conclusion is that Congress intended the calculation to be an actuarial one, based on the age of the beneficiary. To subscribe to the opposite conclusion, we must believe that Congress intended, by its wording of § 602 (h) (2), to bestow upon beneficiaries of World War II servicemen total payments completely disproportionate to those available to beneficiaries of World War I servicemen. To believe that Congress, by the enactment of a somewhat ambiguous provision, intended this disproportionate result along with the other disparities that have been shown to be required by the respondent's view, puts too great a strain upon the imagination.

Moreover, the congressional draftsmen of § 602 (h) (2), with the example before them of the 1924 Act and the similar practice of standard commercial insurance companies, undoubtedly considered that even the very wording of that subsection, without more, necessarily implied that the Administrator was to follow the existing practice in calculating the size of the monthly installments. As previously noted, the term "certain" appearing in the phrase "equal monthly installments for one hundred and twenty months certain" is a technical word that connotes, because of the context in which it is commonly used in standard commercial policies, an actuarial calculation of the monthly installments payable.

For example, one of the standard life insurance policies used in 1940 provided for a life income option to be "Made payable in equal annual, semi-annual, quarterly or monthly instalments for ten or twenty years certain, with payments continuing during the remaining lifetime of the person upon whose life the income depends . . . . The first instalment will be due upon the date on which the option becomes operative. The amount of such instalments shall be determined in accordance with the table of instalments on the following page, which instalments include interest at the rate of 3% per annum,

and shall be based on the sex and the age at birthday nearest the due date of the first instalment, of the person upon whose life the income depends. . . ." [28] Another example, closer to the concise form of § 602 (h) (2), though using the term "fixed" rather than "certain," is an option which provides for "the payment of equal monthly instalments in accordance with the table below [a table whose payments are graduated in amount with respect to the "Age of Payee Nearest Birthday at Date of First Instalment"], to the insured or the beneficiary, as the case may be, for a fixed period of ten years and for so long thereafter as the payee shall survive, the first instalment being payable immediately." [29]

Congress may also have assumed that its intent was made manifest by the juxtaposition of § 602 (h) (2) with other provisions having similar connotations. Section 602 (1), for example, authorizes the Administrator "to set aside out of [the National Service Life Insurance Fund] such reserve amounts *as may be required under accepted actuarial principles to meet all liabilities* under such insurance. . . ." (Italics added.) And § 602 (e)

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[28] *The Handy Guide to Standard and Special Contracts* (1940) 294.

[29] *Id.* at 613.

A third illustration provides in the following terms for an election between a plan similar to that provided by § 602 (h) (2) as construed by Regulation 3450, and the refund life income plan provided by the 1944 amendment to the statute (see note 33 *infra*): "The company will pay equal monthly instalments during the payee's remaining life, with 120 or 240 instalments certain or with instalments certain until the proceeds are refunded, as may be designated in the election of the option, the amount of each instalment to be determined from the table entitled 'Option 4—Life Income With Instalments Certain' in accordance with the sex of the payee and the age of the payee at the payee's birthday nearest to the date when the proceeds of this policy shall become payable, the first of said instalments to be payable immediately. . . ." *Handy Guide, supra* note 28, at 983. See also *id.* at 1284–85.

provides that the premium rates, all "cash, loan, paid up, and extended values, *and all other calculations in connection with such insurance, shall be based upon said American Experience Table of Mortality* and interest at the rate of 3 per centum per annum. . . ." (Italics added.)

In any event, the subsequent legislative history of the statute clearly indicates congressional approval of the construction put upon § 602 (h) (2) by Regulation 3450. A proposed bill was suggested in a letter written by the Administrator of the Veterans' Administration to Congress in June, 1944, to amend §§ 602 (h) (1) and 602 (h) (2) of the 1940 Act by authorizing "the election of a refund life income in lieu of the mode of payments now provided." [30] In explaining the necessity of the amendment, the Administrator pointed out that if "a widow having a minor child, who is entitled to payments as provided in section 602 (h) (2), dies after having received one or more installments of insurance, payments under the contract will cease after payment of 120 installments has been completed *even though the total amount of the installments paid or payable is less than the face value of the policy* and even though the child is too young to be capable of self-support at the time payments expire. The proposed amendments will authorize the payment of the full face value of the insurance *in every instance* and will also insure an income throughout the lifetime of the first beneficiary under the policy." [31]

In other words, the amendment was proposed partly to extend a life income option to beneficiaries covered by § 602 (h) (1), who theretofore had been eligible only for the 240-payment plan, and partly to provide a solution for the inequitable situation presented in certain

[30] S. Rep. No. 1105, 78th Cong., 2d Sess. 2, quoting the Administrator's letter.

[31] *Id.* (italics added).

cases covered by the provisions of § 602 (h) (2), when the 120 installments certain amounted to less than the face value of the policy and the first beneficiary died before having received an amount equal to that face value. The inequitable situation thus considered to be present under § 602 (h) (2) and sought to be ameliorated by the proposed amendment could not have existed, of course, if the Circuit Court of Appeals were correct in the construction it has put upon § 602 (h) (2).

The Senate Committee on Finance, in recommending passage of the bill, adopted the Administrator's letter as explanatory of the various provisions of the bill [32] and indicated thereby its approval of the interpretation embodied in Regulation 3450, since otherwise a major purpose claimed to be effected by the amendment would have been completely illusory. Moreover, a table included in the Administrator's letter, comparing the amount of each monthly installment and the sum of the guaranteed installments under the new refund life income plan and under § 602 (h) (2), clearly apprised Congress of the construction put upon the latter section by the regulation. Hence, in enacting the amendment [33] Congress indicated

[32] *Id.* at 1.

[33] Section 6 of the 1944 Act, 58 Stat. 762, 763, amended § 602 (h) (2) by providing that the Administrator "may include a provision in the insurance contract authorizing the insured or the beneficiary to elect, in lieu of this mode of payment, a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract less any indebtedness with such payments continuing throughout the lifetime of such beneficiary: *Provided further*, That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months, nor in any case in which payments of insurance installments have been commenced prior to the date of this amendatory Act." Section 5 of the 1944 Act added a similar amendment to § 602 (h) (1).

its approval of the interpretation upon which the Regulation is based.[34]

Similar recognition that in many instances "the aggregate amount of insurance actually payable" under the original mode of settlement provided by § 602 (h) (2) "amounted to much less than the face of the policy" was given by the House Committee on World War Veterans' Legislation, in recommending a 1946 amendment to permit policies on which payments had been made prior to the 1944 act to elect the refund life income plan.[35] The 1946 bill also included a provision setting up optional modes of settlement for insurance maturing on or after August 1, 1946, and the third option was couched in language identical in every significant respect to that used in the original § 602 (h) (2).[36] Accordingly, when Con-

[34] Cf. *Alexander* v. *Mayor, &c.*, 5 Cranch 1, 7–8 (1809).

[35] H. R. Rep. No. 2002, 79th Cong., 2d Sess. 5. The measure was approved by Congress, and § 9 of the Act amends § 602 (h) (1) and (2) as indicated. 60 Stat. 781, 785.

[36] The measure provided for the addition of a new § 602 (t), reading as follows: "Insurance maturing on or subsequent to the date of enactment of the Insurance Act of 1946 shall be payable in accordance with the following optional modes of settlement:

"(1) In one sum.

"(2) In equal monthly installments of from thirty-six to two hundred and forty in number, in multiples of twelve.

"(3) In equal monthly installments for one hundred and twenty months certain with such payments continuing during the remaining lifetime of the first beneficiary.

"(4) As a refund life income in monthly installments payable for such period certain as may be required in order that the sum of the installments certain, including a last installment of such reduced amount as may be necessary, shall equal the face value of the contract, less any indebtedness, with such payments continuing throughout the lifetime of the first beneficiary: *Provided*, That such optional settlement shall not be available in any case in which such settlement would result in payments of installments over a shorter period than one hundred and twenty months. . . ."

gress enacted the 1946 bill, it in effect incorporated the old provision of § 602 (h) (2), which was the basis for Regulation 3450, and in our view thereby accepted the construction embodied in that regulation, which had been so clearly brought to its attention on this and prior occasions.

Further evidence, were any needed, that Congress accepted as its own this interpretation of the language used in § 602 (h) (2) is supplied by the significant distinction maintained in this reenactment between the mode of payment originally provided by § 602 (h) (2) and the refund life income plan, viewed in the light of the House Committee Report on the bill. It is hardly conceivable—and if conceivable, hardly explicable—that Congress meant one thing by the language it used in § 602 (h) (2) when enacting the original measure in 1940, and another, quite different thing, when it reenacted that language in 1946.

In the light of the foregoing considerations, the validity of Regulation 3450 is sustained and the decision of the Circuit Court of Appeals is

Reversed.